UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

FILED
2005 SEP 30 P 3:49
U.S. BANKRUPTCY COURT
BY____________

In re: Cathy Suzanne Brookshire,

Debtor,

405 Mica Court
Winston-Salem, NC 27103-6461

Last four digits of Social Security Number: 0396

CASE NO. B-05-51091
Chapter 7

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BRYAN C. THOMPSON,
Administrator CTA of the Estate of Florence Cathleen Parker Brookshire, and
KIM C. BROOKSHIRE,

Plaintiffs,

v.

CATHY SUZANNE BROOKSHIRE,
EDWIN H. FERGUSON, JR., Bankruptcy Trustee

Defendants.

ADVERSARY PROCEEDING

No. 05-6022

## BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

### Procedural Background

The debtor, Cathy Suzanne Brookshire ("defendant"), was the defendant in a civil action in Forsyth County, North Carolina, and default judgment was entered against her. (*Brookshire v. Brookshire*, 04 CVS 5209, hereafter, the "Forsyth County lawsuit"). The judgment is Exhibit B to the Complaint in this adversary proceeding. During execution of the judgment, defendant filed her Chapter 7 bankruptcy petition.

At the same time that the Forsyth County lawsuit was commenced, plaintiff Kim C. Brookshire also filed a caveat proceeding on March 20, 2003, challenging a document purporting to be a will that was signed by Florence Cathleen Parker Brookshire ("Mrs. Brookshire"), along with other documents, including the power of attorney relevant to this adversary proceeding. Judgment that the document was not Mrs. Brookshire's will was entered by the Forsyth County Superior Court on September 16, 2005. A copy of the caveat judgment is attached as Exhibit 1.

On May 5, 2005, plaintiffs filed an adversary proceeding before this Court incorporating the findings in the judgment in the Forsyth County lawsuit and alleging the following claims: (1) a resulting or constructive trust in a Hummer H2 vehicle that was in defendant's possession; (2) a lien on the Hummer; (3) breach of fiduciary duty; (4) conversion and misappropriation of funds; and (5) nondischargeability of debt resulting from false pretenses, a false representation or actual fraud, for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny, and willful and malicious injury by defendant to another. On June 1, 2005, plaintiffs amended the adversary proceeding Complaint to add Edwin Ferguson, the trustee in bankruptcy for defendant, as a party.

In the bankruptcy proceeding, on May 5, 2005, plaintiffs filed an objection to any exemption claimed by defendant in the Hummer. On June 30, 2005, this Court entered an order that plaintiffs' objection to the exemption claimed by defendant in the Hummer was sustained and that Mrs. Brookshire's estate was the rightful owner of the Hummer. On September 12, 2005, the Hummer was sold at auction for approximately $31,000, and those funds were paid into the estate.

On May 11, 2005, defendant filed a motion to dismiss the adversary proceeding. The motion was heard on June 8, 2005, and the Court entered an order denying defendant's motion to dismiss on June 21, 2005.

Plaintiffs now seek summary judgment in the adversary proceeding.

## Factual History

Mrs. Brookshire was 80 years old in 2002. She lived by herself, and she needed assistance in managing her day-to-day finances. On June 22, 2000, and again on May 3, 2002, she appointed her son, Kim C. Brookshire, her attorney-in-fact (Exhibits 2 and 3, respectively), and he ensured that Mrs. Brookshire's bills were paid, that Meals on Wheels were delivered to her, that her prescription medications were kept current, that she had a taxi service for transportation (Mrs. Brookshire did not drive), that she had a way to call for help in case she could not get to a telephone, and that other necessities were provided. Affidavit of Teresa G. Brookshire, Exhibit 4.

In March 2003, defendant took Mrs. Brookshire to an attorney's office and oversaw Mrs. Brookshire's signing a durable power of attorney that made defendant Mrs. Brookshire's attorney-in-fact. See Exhibit 5. Defendant took control of Mrs. Brookshire's assets and took them for herself. All of the services arranged by Kim C. Brookshire were cancelled. Affidavit of Teresa G. Brookshire, and Deposition of Cathy Suzanne Brookshire dated September 14, 2004, attached as Exhibit 6, hereinafter the "Deposition," pp. 42, 78-81.

Mrs. Brookshire had no credit card debt when defendant began controlling her assets. Affidavit of Teresa Brookshire. Defendant used Mrs. Brookshire's credit cards for herself and purchased for herself clothes, photography services, vacations, meals, knives, furniture, pet supplies, and gasoline and automobile accessories and services. Deposition, pp. 58-78. Defendant charged at least $6,630.60 to Mrs. Brookshire's credit cards for items which were for defendant's sole use. *Id.*, *see also* default judgment, Exhibit B to adversary proceeding Complaint. Credit card bills regarding which defendant testified in her deposition are Exhibit 7.

Defendant used Mrs. Brookshire's income and checking account as her own. Defendant spent all of Mrs. Brookshire's savings on herself, by writing checks for items and services for her sole benefit in the amount of at least $30,000. Affidavit of Teresa Brookshire. Copies of the checks are Exhibit 8.

Defendant used her authority as attorney-in-fact to obtain a home equity line of credit in Mrs. Brookshire's name, using Mrs. Brookshire's home as security. Deposition, pp. 55-58. Defendant took $54,952.12 from the home equity line, using the funds to pay her own living expenses, to pay her personal debts, and to buy accessories for her vehicle. *Id.*

Defendant used her authority as attorney-in-fact to sell Mrs. Brookshire's real property in Alleghany County, North Carolina. Deposition, pp. 31-32. Deed to Alleghany County property signed by defendant, Exhibit 9. Defendant signed all of the real estate sale documents herself and used the sale proceeds to buy a Hummer H2 for herself and to pay personal debts. Deposition, pp. 31-32, 47. The Court determined in the bankruptcy proceeding that the Hummer H2 was rightfully the property of Mrs. Brookshire's estate, as it was subject to a constructive trust. Order dated June 30, 2005.

Defendant took all of Mrs. Brookshire's property, so that Mrs. Brookshire was left without meals, without transportation, and without a way to call for help if she could not reach the telephone. The services that had been set up to provide these things for Mrs. Brookshire were all cancelled because defendant did not pay for them, but instead used all of Mrs. Brookshire's assets for herself. Mrs. Brookshire received notices that her electricity bill was not paid, that her property taxes were not paid, and that her homeowner's insurance had lapsed because of nonpayment of the premium. Deposition, pp. 78-82. Copies of notices of nonpayment are Exhibit 10.

In July 2004, Mrs. Brookshire was found in her home by a neighbor. Mrs. Brookshire was slumped over in a chair and had been unable to get up for days. Mrs. Brookshire was dehydrated and soiled when she was found. She developed an infection from sores, and she died as a result of it. Affidavit of Teresa Brookshire.

The Forsyth County Superior Court entered a default judgment against defendant in this matter on January 13, 2005, in the amount of $341,514.40, to be paid to Mrs. Brookshire's estate.

These facts are undisputed, and most of them were admitted by defendant in her deposition.

## Argument

Based upon the undisputed facts, plaintiffs are entitled to judgment as a matter of law. The facts show that defendant committed fraud or defalcation while acting in a fiduciary capacity; she committed embezzlement; she willfully and maliciously injured Mrs. Brookshire, and she perpetrated actual fraud upon Mrs. Brookshire. The judgment in the Forsyth County lawsuit is a debt of defendant resulting from her actions toward Mrs. Brookshire, and that debt should not be discharged.

### 1. Fraud or defalcation while acting in a fiduciary capacity.

A general discharge does not discharge an individual debtor from any debt for fraud or defalcation while acting in a fiduciary capacity. 11 U.S.C. § 523(a)(4). To establish such fraud or defalcation, the plaintiffs must show that: (1) there exists an express trust or fiduciary relations of "inequality that justify the imposition on the fiduciary of a special duty, basically to treat his principal's affairs with all the solicitude that he would accord his own affairs," *Schaffer v. Dempster*, 182 B.R. 790 (N.D. Ill. 1995) (quoting *Matter of Marchiando*, 13 F.3d 1111, 1116 (7th Cir.), *cert denied sub nom. Illinois Dept. of Lottery v. Marchiando*, 512 U.S. 1205, 114 S. Ct. 2675, 129 L. Ed. ed 810 (1994); (2) that the debt was caused by the defendant's fraud or defalcation; and (3) the defendant acted as fiduciary to the plaintiff at the time the debt was created. *Id.*, citing, *Klingman v. Levinson*, 831 F.2d 1292, 1295 (7th Cir. 1987); *Green v. Pawlinski* (*In re Pawlinski*), 170 B.R. 380, 388 (Bankr. N.D. Ill. 1994). The term "fiduciary" in the dischargeability context is limited to express or "technical" trusts or trusts created by statute. Express or technical trusts are formed by positive acts of both parties. *Id.*

In the *Schaffer* case, the plaintiff failed to demonstrate that the defendant served as a fiduciary, because there was no formal agreement between the plaintiff and the defendant. The court acknowledged, "True, Plaintiff did informally entrust all of his financial affairs to Defendant. However, he apparently relies on the term 'fuduciary' in its popular context. . ." *Id.* at 802. In this matter, however, defendant was serving Mrs. Brookshire pursuant to a written instrument. The power-of-attorney instrument established a formal relationship between defendant and Mrs. Brookshire, whereby defendant's authority over Mrs. Brookshire's property was expressly set out. Mrs. Brookshire executed the power of attorney, and defendant undertook to act using it, pursuant to the terms of the document. Both parties took positive acts to create the formal fiduciary relationship. The defendant breached her fiduciary duty as established in the power of attorney and committed defalcation, by spending nearly all of Mrs. Brookshire's assets on herself and impoverishing Mrs. Brookshire.

**2. Embezzlement.**

Included in the same section of the Code as the exception to dischargeability for fraud or defalcation while acting in a fiduciary capacity is the exception for a debt resulting from embezzlement. Embezzlement is fraudulent appropriation of property of another by a person to whom the property has been entrusted or into whose hands it has lawfully come. *In re Belfry*, 862, F.2d 661, 662 (8th Cir. 1988). The embezzlement exception makes debts nondischargeable regardless of whether an express or technical trust exists. Instead, to establish embezzlement, a plaintiff must prove that the debtor was not lawfully entitled to the use of funds for the purposes for which they were in fact used. *Id.* The elements of embezzlement are: (1) the creditor entrusted property to the debtor; (2) the debtor appropriated the property for a use other than that for which it was entrusted; and (3) the circumstances indicate fraud. *In re Dryja*, 259 B.R. 629 (N.D. Ohio 2001), citing *Brady v. McAllister*, 101 F.3d 1165, 1172-73 (6th Cir. 1996).

The undisputed facts in this matter show that these elements of embezzlement are met, and plaintiffs are entitled to judgment as a matter of law:

(1) Mrs. Brookshire entrusted defendant with her property, by making defendant her attorney-in-fact. Defendant had Mrs. Brookshire's checkbook, Deposition, pp. 28, 50-51, had her name added to Mrs. Brookshire's credit card accounts, Deposition, p. 29, and used her authority as attorney-in-fact to sell Mrs. Brookshire's real property. Deposition, pp. 31-32.

(2) Defendant appropriated the property entrusted to her by Mrs. Brookshire for a use other than that for which it was entrusted. Mrs. Brookshire gave defendant her power of attorney for defendant to help her manage her assets. The document by which Mrs. Brookshire entrusted her property to defendant is a North Carolina power of attorney, and the North Carolina courts have construed these documents and have given clear guidance as to the obligations of an agent acting under a North Carolina power of attorney. The agent appointed by a power of attorney has an obligation to act in the best interests of her principal. *Estate of Graham v. Morrison*, 168 N.C. App. 63, 607 S.E.2d 295, 299 (2005), citing *Whitford v. Gaskill*, 345 N.C. 475, 478, 480 S.E.2d 690, 692 (1997). An agent acting under a North Carolina power of attorney has a duty to conduct transactions "for the benefit of the principal and [a North Carolina power of attorney] does not authorize the agent to make a gift of the property, or to convey or transfer it without a present consideration inuring to the principal." *Id.*, quoting *Honeycutt v. Farmers & Merchants Bank*, 126 N.C. App. 816, 818, 487 S.E.2d 166, 167 (1997). Defendant did not use Mrs. Brookshire's assets for the purpose for which they were entrusted to her, but instead used them to buy things for herself, pay her own debts, and take vacations.

(3) The circumstances of defendant's use of Mrs. Brookshire's assets for herself indicate fraud. Mrs. Brookshire was led to believe that the defendant would act in her best interest and manage Mrs. Brookshire's assets for Mrs. Brookshire's benefit. Defendant has admitted that she agreed to serve as attorney-in-fact, and, therefore, it can be presumed that defendant made representations to Mrs. Brookshire that she would faithfully undertake the duties of an attorney-in-fact. Deposition, pp. 106-107. Defendant, however, took so much property from Mrs. Brookshire that Mrs. Brookshire's needs were neglected, and she

died as a result of the neglect. At the time of her death, the only asset that Mrs. Brookshire retained was her home, encumbered by more than $55,000 of debt incurred by defendant. These circumstances indicate fraud. Furthermore, "in the case of an agent with the power to manage all the principal's property, it is sufficient to raise a presumption of fraud when the principal transfers property to the agent. Self dealing by the agent is prohibited." *Id.* at 299-300, *quoting Hutchins v. Dowell*, 138 N.C. App. 673, 677, 531 S.E.2d 900, 903 (2000).

Defendant, by taking Mrs. Brookshire's property for herself, was not only acting outside the scope of the power of attorney by not acting in Mrs. Brookshire's best interests, but defendant was also acting outside of the authority given to her on the face of the document. A power of attorney must expressly confer the authority to give gifts in order for the attorney-in-fact to be authorized to give gifts. *Whitford v. Gaskill*, 119 N.C. App. 790, 793, 460 S.E.2d 346. An attorney-in-fact is presumed to act in the best interests of the principal, and because the power to make a gift of the principal's property is potentially adverse to the principal, such power will not be lightly inferred from broad grants of power contained in a general power of attorney. *Honeycutt v. Farmers & Merchants Bank*, 126 N.C. App. 816, 818-819, 487 S.E.2d 166, 167. Any statements made by a principal purporting to extend an attorney-in-fact's authority would be ineffective and should be excluded from evidence. *Honeycutt*, 126 N.C. App. 821, 487 S.E.2d 169.

The only power to make gifts of Mrs. Brookshire's property contained in the power of attorney was the standard statutory provisions regarding gifts to charities, individuals other than the attorney-in-fact, and the attorney-in-fact. N.C. Gen. Stat. § 32A-1(14) and (15). This authority is explained in N.C. Gen. Stat. § 32A-2 as the power: "To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the attorney-in-fact, in accordance with the principal's personal history of making or joining in the making of prior gifts."

Mrs. Brookshire did not have a history of making gifts to defendant. As shown in the will prior to the March 2003 document (which has been overturned), Mrs. Brookshire specifically mentioned a $20,000 loan to the defendant. The prior will is Exhibit 11.

Plaintiffs are entitled to judgment as a matter of law that defendant's debt is not dischargeable because it is a result of her embezzlement of Mrs. Brookshire's property.

**3. Fraud and false pretenses.**

Defendant's actions toward Mrs. Brookshire also fit the definition of the exception to dischargeability for debts "for money, property, services, or an extension, renewal, or refinancing of credit to the extent obtained by - (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." 11 U.S.A. § 523 (a)(2)(A). The elements of fraud are: (1) defendant made a representation; (2) at the time of making the representation, defendant knew it was false; (3) defendant made the misrepresentation with the intention and purpose of deceiving the creditor; (4) the creditor relied upon the defendant; and (5) the creditor sustained a loss as a result of the reliance. *In re Adkins*, 183 B.R. 702, 706 (M.D.N.C. 1995), citing *In re Booker*, 165 B.R. 164 (M.D.N.C. 1994); *In re Criswell*, 52 B.R. 184 (E.D. Va. 1985); *In re Showalter*, 86 B.R. 877 (W.D. Va. 1988).

(1) The misrepresentation can be shown through conduct, and does not require a spoken statement. *In re Scarpello*, 272 B.R. 691 (N.D. Ill. 2002). Defendant undertook to act as Mrs. Brookshire's agent under her power of attorney. Deposition, pp. 106-107.

Defendant's acting under the power of attorney was in itself conduct that constituted a misrepresentation, in that by acting under the power of attorney, she was obligated to act in Mrs. Brookshire's best interests, when in fact defendant knew that she would not act in Mrs. Brookshire's best interests, but instead would take Mrs. Brookshire's property for herself.

(2) Defendant knew from the time she began acting under authority of the power of attorney that she would use Mrs. Brookshire's assets for herself, and not in the best interests of Mrs. Brookshire. Defendant had no source of income other than what she took from her mother, and defendant had no plans to go to work or to undertake any other method of securing income for herself. Deposition, pp. 9-10.

(3) Defendant intended to deceive Mrs. Brookshire when defendant took Mrs. Brookshire to the attorney's office for the purpose of having Mrs. Brookshire execute the power of attorney and the new will. Deposition, pp. 105-107. Defendant had threatened to harm herself in the past to get money from Mrs. Brookshire (Affidavit of Teresa Brookshire), and defendant's actions in taking nearly all of Mrs. Brookshire's assets and leaving her without the necessities create a reasonable inference that defendant intended to deceive Mrs. Brookshire when defendant induced Mrs. Brookshire to execute the power of attorney and to give defendant control of her assets.

(4) Mrs. Brookshire relied upon defendant's misrepresentation, as evidenced by the fact that she signed the power-of-attorney document and that she allowed defendant to manage her financial affairs.

(5) Defendant obtained at least $241,514.40 from Mrs. Brookshire during a period in which she had undertaken to manage Mrs. Brookshire's assets for her benefit.

Mrs. Brookshire was left impoverished and without meals, without transportation, and without a way to call for help in case she could not reach a telephone, while defendant used Mrs. Brookshire's assets for her own benefit and enjoyment. Defendant should not be discharged from the judgment debt that she incurred as a result of her actions in defrauding her mother.

**4. Willful and malicious injury by the debtor to another.**

In addition to fitting the nondischargeability exceptions for fraud or defalcation while acting in a fiduciary capacity, embezzlement, and fraud and false pretenses, defendant's actions that led to the judgment against her also fit the exception for willful and malicious injury by the debtor to another. 11 U.S.C. § 523(a)(6). There are two elements for finding that a debt is nondischargeable because of willful and malicious injury by the debtor to another: (1) the conduct must be willful; and (2) the conduct must be malicious. *In re Adkins,* 183 B.R. 702, 706 (M.D.N.C. 1995). For conduct to be willful, it must be "a deliberate or intentional act which is certain or substantially certain to cause injury." *Id.* To prove that the conduct was malicious, "a plaintiff is not required to prove specific malice, spite, hatred, or ill-will. 'Implied malice, which may be shown by the acts and conduct of the debtor in the context of the surrounding circumstances, is sufficient under 11 U.S.C. § 523(a)(6).'" *Id.* at 606-607, *quoting St. Paul Fire and Marine Ins. Co. v. Vaughn*, 779 F.2d 1003, 1010 (4th Cir. 1985).

Defendant was found in the Forsyth County lawsuit to have converted Mrs. Brookshire's property to her own use, excluding Mrs. Brookshire from the use of the property. Judgment, Exhibit B to adversary proceeding Complaint. The Fourth Circuit Court of Appeals has stated: "While it is true that every act of conversion is not necessarily 'willful and malicious' within the meaning of the statute, . . . nevertheless if the act of conversion is done deliberately and intentionally in knowing disregard of the rights of another, it falls within the statutory exclusion even though there may be an absence of special malice." *Bennett v. W.T. Grant Co.*, 481 F.2d 664 (4th Cir. 1973), *citing Davis v. Aetna Acceptance Co.*, 293 U.S. 328, 55 S. Ct. 151, 79 L. Ed. 393 (1934); *McIntyre v. Kavanaugh*, 242 U.S. 138, 37 S. Ct. 38, 61 L. Ed. 205 (1916). Conversion, in order to make a debt nondischargeable, requires the wrongful exercise of dominion by one person over the property of another, and it must be shown that the appropriation of property was unauthorized and without the consent of the owner. *Sears, Roebuck & Company v. Goycochea*, 192 B.R. 847 (D. Md. 1996).

Defendant took Mrs. Brookshire's property through calculated acts. She wrote Mrs. Brookshire's checks for her own purchases. She used all of the money in Mrs. Brookshire's checking account and bounced checks. She had herself added as an authorized user of Mrs. Brookshire's credit cards and used them as her own. She applied for and obtained lines of credit on Mrs. Brookshire's house. She hired a real estate agent, signed a listing agreement, and signed the closing papers, including a deed, for the sale of Mrs. Brookshire's property in Alleghany County, keeping the proceeds of the sale for herself. She left Mrs. Brookshire in her home with no transportation, no Meals on Wheels, and no way to call for help if she could not reach a telephone. These planned, intentional acts show that defendant willfully and maliciously harmed her mother and, therefore, plaintiffs are entitled to judgment as a matter of law that defendant's debt pursuant to the judgment in the Forsyth County lawsuit should not be discharged.

## Conclusion

The undisputed evidence before the Court shows that plaintiffs are entitled to judgment as a matter of law, and, therefore, plaintiffs request that the Court enter judgment that defendant's debt pursuant to the judgment in the Forsyth County lawsuit will not be discharged.

This, the ___ day of September, 2005.

CRAIGE BRAWLEY LIIPFERT & WALKER LLP
Attorneys for plaintiffs

By: ______________________
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**UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF NORTH CAROLINA**
**WINSTON-SALEM DIVISION**

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|---|---|---|
| In re: Cathy Suzanne Brookshire,<br><br>Debtor,<br><br>405 Mica Court<br>Winston-Salem, NC 27103-6461<br><br>Last four digits of Social Security Number: 0396 | ) | **CASE NO. B-05-51091**<br>**Chapter 7** |
| BRYAN C. THOMPSON,<br>Administrator CTA of the Estate of Florence Cathleen Parker Brookshire, and<br>KIM C. BROOKSHIRE,<br><br>Plaintiffs,<br><br>v.<br><br>CATHY SUZANNE BROOKSHIRE,<br>EDWIN H. FERGUSON, JR., Bankruptcy Trustee<br><br>Defendants. | ) | **ADVERSARY PROCEEDING**<br><br>**No. 05-6022** |

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served the document captioned Brief In Support Of Motion For Summary Judgment in the above-entitled action upon all other parties to this cause by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department properly addressed to:

Bryan Gates, Esq.
One North Marshall Street, Suite 100
Winston-Salem, NC 27101
Attorney for Debtor Cathy Suzanne Brookshire

Bryan C. Thompson, Esq.
125 W. Third Street, Suite 15
Winston-Salem, NC 27101
Administrator CTA of the Estate of
Florence Cathleen Parker Brookshire

This, the 30 day of September, 2005.

CRAIGE BRAWLEY LIIPFERT & WALKER LLP
Attorneys for plaintiffs

By [signature]
William W. Walker
110 Oakwood Drive, Suite 300
Winston-Salem, NC 27103
Telephone: (336) 725-0583
N.C. State Bar No. 8072

**EXHIBIT 1**

NORTH CAROLINA ) FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FORSYTH COUNTY ) 05 SEP 16 PM 4:16 04 CvS 5210

FORSYTH COUNTY, C.S.C.

In The Matter Of: THE WILL OF )
FLORENCE CATHLEEN PARKER BROOKSHIRE ) **JUDGMENT**
(Forsyth County estate file 04 E 1276) )

This caveat proceeding came before the Court for trial on September 13, 2005. Propounder Cathy Suzanne Brookshire appeared *pro se.* Caveator Kim C. Brookshire was represented by William W. Walker, Esq., and Rebecca L. Smitherman, Esq. Brian C. Thompson, administrator C. T. A. of the estate of Cathleen Brookshire, did not appear in person or by counsel, although he received proper notice of the trial.

At the close of the propounder's evidence, the Court granted the caveator's motion for a directed verdict, pursuant to Rule 50(a), N.C.R.Civ.P.

The Court then submitted the following issue to the jury: "Did the Propounder prove by the greater weight of the evidence that the document she referred to in her testimony was executed according to the requirements of law for a valid attested will?" The jury answered the issue "No."

Now, therefore, IT IS HEREBY ORDERED that:

1. The caveat filed by Kim C. Brookshire to the document entitled Last Will And Testament of Florence Cathleen Parker Brookshire, dated March 20, 2003, and admitted to probate by the Clerk of Court on August 2, 2004, is sustained;

2. The document entitled Last Will And Testament of Florence Cathleen Parker Brookshire, dated March 20, 2003, and admitted to probate on August 2, 2004, is void and of no effect;

3. The costs of this proceeding are taxed to Cathy Suzanne Brookshire; and

4. This estate is returned to the jurisdiction of the Clerk of Court for administration as provided by law; provided that this Court retains jurisdiction to hear any motion by caveator for an order taxing attorney fees.

This, the 15th day of September, 2005.

A. Moses Massey
Superior Court Judge

EXHIBIT 2

FORSYTH CO,NC 263 FEE:$ 10.00
PRESENTED & RECORDED: 07/07/2000 4:34PM
DICKIE C. WOOD REGISTER OF DEEDS BY:THOMAS
BK2124 P3217 - P3218

DRAFTED BY: George F. Phillips Box #54

NORTH CAROLINA )
)
FORSYTH COUNTY )

DURABLE POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, FLORENCE CATHLEEN PARKER BROOKSHIRE, the undersigned, of Forsyth County, North Carolina, have made, constituted, and appointed, and by these presents do HEREBY MAKE, CONSTITUTE and APPOINT my son, KIM CHARLTON BROOKSHIRE, my true and lawful attorney-in-fact, for me and in my name, place and stead, on my behalf, giving unto my said attorney-in-fact full power to act in my name, place and stead in any manner which I could if I were personally present in doing and performing the following matters and things:

(1) To collect and receive, hold, manage and invest any and all funds and properties due or payable to me from any and all sources whatsoever, including accounts receivable, interest, dividends and other stock increments, rentals, employee benefits, insurance proceeds, Social Security, Veterans, retirement, disability, and other benefits, tax refunds and rebates or other assets; including but not limited to the right to have free access at any time or times to any safe deposit box or vault to which the principal might have access as lessee or owner, and including the further right to close or open any safe deposit box;

(2) To execute in my behalf any and all legal documents necessary or customary in the transacting of my business affairs and management and protection of my property as herein provided for, including the right to sell or transfer any stocks or bonds held by me;

(3) To prosecute and/or defend in my behalf any legal actions or proceedings necessary or appropriate to carry out the intent of this Power of Attorney and to compromise, settle and agree to any terms reasonable in such actions or proceedings;

(4) To do and perform and to exercise in my behalf all those certain powers enumerated in Section 32A-1 (1) through (15) of the General Statutes of the State of North Carolina, which powers are hereby expressly herein incorporated by reference;

(5) To make any and all decisions necessary for my medical care and attention including medical, hospital and nursing care;

And I do hereby ratify, confirm and approve all matters and things done and performed by my attorney-in-fact, or any substitute hereinafter named, pursuant to and within the scope of authority granted by this Power of Attorney;

This Power of Attorney is executed pursuant to the provisions of Section 32A-8 of the General Statutes of North Carolina, as a durable power of attorney and shall not be affected by my subsequent incapacity or mental incompetence, but continue in effect notwithstanding same; however, in the event it is necessary for the court to appoint a conservator, guardian of my estate, or guardian of my person in any protective proceedings filed in my behalf, I then nominate my attorney-in-fact herein named to serve in said capacity;

I direct that my said attorney-in-fact shall not be required to file this Power of Attorney nor any inventory nor accounting thereunder with any Clerk of Superior Court but shall at least annually account to me or my closest kin if I should be incapacitated or incompetent, for any transactions done or performed in my behalf pursuant to said Power of Attorney;

IN TESTIMONY WHEREOF, I, FLORENCE CATHLEEN PARKER BROOKSHIRE, the undersigned, have hereunto set my hand and seal and duly executed the foregoing Power of Attorney. This the 22nd day of June, 2000.

Florence Cathleen Parker Brookshire
FLORENCE CATHLEEN PARKER BROOKSHIRE

NORTH CAROLINA - FORSYTH COUNTY

On this 22nd day June, 2000 personally appeared before me, the said named FLORENCE CATHLEEN PARKER BROOKSHIRE, to me known and known to me, to be the person described herein and who executed the foregoing Power of Attorney, and who acknowledged the execution of same and, being duly sworn by me, made oath that the statements in said Power of Attorney are true.

Elizabeth K. Parker
Notary Public

My Commission Expires: February 18, 2002

OFFICIAL SEAL
Notary Public, North Carolina
COUNTY OF DAVIDSON
ELIZABETH K. PARKER

*****************

NORTH CAROLINA - FORSYTH COUNTY

The foregoing certificate of Elizabeth K. Parker, a Notary Public of Davidson County, North Carolina, is certified to be correct. This the 7th day of July, 2000.

DICKIE C. WOOD - REGISTER OF DEEDS/FORSYTH COUNTY

By: [signature]
Deputy/~~Assistant~~

Page Two of Two

FORSYTH CO,NC 102 FEE:$ 17.00
PRESENTED & RECORDED: 05/07/2002 11:17AM
DICKIE C. WOOD REGISTER OF DEEDS BY:THOMAS
BK2251 P1645 - P1646

EXHIBIT 3

DRAFTED BY: Percy L. Wall, NC BAR #4535

NORTH CAROLINA

DURABLE POWER OF ATTORNEY

FORSYTH COUNTY

KNOW ALL MEN BY THESE PRESENTS, that I, FLORENCE CATHLEEN PARKER BROOKSHIRE, of Forsyth County, North Carolina, do hereby revoke all Powers of Attorney heretofore made by me and do hereby make, constitute and appoint my son, KIM CHARLTON BROOKSHIRE, my true and lawful attorney-in-fact, for me and in my name, place and stead, on my behalf, giving unto my said attorney-in-fact full power to act in my name, place and stead in any manner which I could if I were personally present in doing and performing the following matters and things:

(1) To collect and receive, hold, manage and invest any and all funds and properties due or payable to me from any and all sources whatsoever, including accounts receivable, interest, dividends and other stock increments, rentals, employee benefits, insurance proceeds, Social Security, Veterans, retirement, disability, and other benefits, tax refunds and rebates or other assets; including but not limited to the right to have free access at any time or times to any safe deposit box or vault to which the principal might have access as lessee or owner, and including the further right to close or open any safe deposit box;

(2) To execute in my behalf any and all legal documents necessary or customary in the transacting of my business affairs and management and protection of my property as herein provided for, including the right to sell or transfer any stocks or bonds held by me;

(3) To prosecute and/or defend in my behalf any legal actions or proceedings necessary or appropriate to carry out the intent of this Power of Attorney and to compromise, settle and agree to any terms reasonable in such actions or proceedings;

(4) To do and perform and to exercise in my behalf all those certain powers Enumerated in Section 32A-1 (1) through (15) of the General Statutes of the State of North Carolina, which powers are hereby expressly herein incorporated by reference;

(5) To make any and all decisions necessary for my medical care and attention including medical, hospital and nursing care;

I also give to my attorney-in-fact full power and authority to appoint or substitute another to act as my attorney-in-fact and full power and authority to revoke such appointment.

And I do hereby ratify, confirm and approve all matters and things done and performed by my attorney-in-fact, or any substitute attorney-in-fact, pursuant to and within the scope of authority granted by this Power of Attorney;

EXHIBIT 4

**UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF NORTH CAROLINA**
**WINSTON-SALEM DIVISION**

| | | |
|---|---|---|
| In re: Cathy Suzanne Brookshire,<br><br>Debtor,<br><br>405 Mica Court<br>Winston-Salem, NC 27103-6461<br><br>Last four digits of Social Security Number: 0396 | ) | **CASE NO. B-05-51091**<br>**Chapter 7** |
| BRYAN C. THOMPSON,<br>Administrator CTA of the Estate of Florence Cathleen Parker Brookshire, and<br>KIM C. BROOKSHIRE,<br><br>Plaintiffs,<br><br>v.<br><br>CATHY SUZANNE BROOKSHIRE,<br>EDWIN H. FERGUSON, JR., Bankruptcy Trustee<br><br>Defendants. | ) | **ADVERSARY PROCEEDING**<br><br>**No. 05-6022** |

**AFFIDAVIT OF TERESA G. BROOKSHIRE**

Teresa G. Brookshire, being duly sworn, deposes and says:

1. I am married to Kim C. Brookshire ("Kim"), the plaintiff in this action. I am over eighteen years of age and a resident of Guilford County, North Carolina. The statements in this affidavit are based on my personal knowledge.

2. Florence Cathleen Parker Brookshire ("Mrs. Brookshire") was the mother of my husband and Cathy Suzanne Brookshire ("Suzanne").

3. On June 22, 2000, and again on May 3, 2002, Mrs. Brookshire appointed Kim her attorney-in-fact. Exhibits 2 and 3 to the Brief in Support of Plaintiffs' Summary Judgment Motion are copies of the powers of attorney.

4. Kim ensured that Mrs. Brookshire's bills were paid, that Meals on Wheels were delivered to her, that her prescription medications were kept current, that she had a taxi service for transportation, that she had a way to call for help in case she could not get to a telephone, and that other necessities were provided. I assisted him in setting up these services for her.

5. In March 2003, Mrs. Brookshire appointed Suzanne as her attorney-in-fact. Exhibit 5 is the power of attorney appointing Suzanne. Suzanne had convinced Mrs. Brookshire that Kim was stealing from her.

6. The services that Kim had arranged to care for Mrs. Brookshire had been cancelled because Suzanne did not pay for them.

7. In or about April, 2004, Kim received a letter from individuals in Alleghany County requesting $100 that Suzanne owed them from the sale of property that Mrs. Brookshire had owned for decades. A copy was enclosed with Suzanne's signature as power of attorney. I was surprised that Mrs. Brookshire had sold this property, as she was proud of ownership of it. She told me many times how she had made $10 payments on it. This property was for her future in case she ever needed to go into a nursing home. Mrs. Brookshire never indicated to me that she knew that this property had been sold. Exhibit 9 is the deed for the sale of the Alleghany County property.

8. Mrs. Brookshire had been living under constant stress as her bills were not getting paid and she was constantly receiving calls from bill collectors. Notices had been

left on her door that her power would be turned off due to non-payment. The Lifeline that we had installed had been removed because Suzanne had not paid the bill and they were harassing Mrs. Brookshire for payment.

9. We received a tax notice from Forsyth County advising that foreclosure action would be initiated if the taxes that were due for 2003 were not paid. I called Suzanne and advised her of this. Suzanne stated that Mrs. Brookshire had no money and that I should pay the tax.

10. On or about June 21, 2004, I received a telephone call from Mrs. Brookshire's next door neighbor who told me that Mrs. Brookshire was in the hospital. Mrs. Brookshire had been found by her cousin, Kay Brown, on Thursday, June 17, 2004 slumped over in a chair, unable to get up.

11. Mrs. Brookshire was released from the hospital in Suzanne's care. When she returned home, Mrs. Brookshire was placed in a chair, without water or a telephone within reach.

12. On Saturday, June 19th, a neighbor went to check on Mrs. Brookshire. She found Mrs. Brookshire slumped over in a chair, begging her to get her some water and a Coke. (Mrs. Brookshire was a diabetic.)

13. Mrs. Brookshire had been unable to get up for days and had nothing to eat or drink.

14. Mrs. Brookshire was again taken to the hospital. Upon my arrival at the hospital, I found Mrs. Brookshire no longer speaking but mumbling.

15. Suzanne told me that Mrs. Brookshire had removed the Lifeline that we had put in because it kept going off and it got on her nerves.

16. Suzanne also told me that she needed to go to Social Services, but did not state why.

17. Suzanne told me that Mrs. Brookshire had a staph infection and that her bottom was broken down extensively.

18. Suzanne repeatedly told me that she had power of attorney, including medical power of attorney.

19. During much of this time, Kim was out of the country on a ship in an unknown location, due to the classified nature of his business as a General Dynamics contractor with the Navy.

20. While Mrs. Brookshire was in the hospital, Suzanne began removing things from her house and throwing away Mrs. Brookshire's property.

21. Suzanne told me that she had removed the deed to burial property (where her father was buried) from Mrs. Brookshire's safety deposit box.

22. Suzanne refused medical treatment for Mrs. Brookshire. Suzanne advised the hospital personnel who tried to help Mrs. Brookshire to stop and instructed them that Mrs. Brookshire was not to be tested.

23. On or about June 26th, I discovered that Mrs. Brookshire was on a floor where they only took vital signs once a day because the patients on that floor were in "palliative care" only. Mrs. Brookshire's vitals were stable.

24. I spoke to Dr. Sheigh, the doctor on call, and he said that he felt like he was in the middle, as Suzanne, the power of attorney, did not want her mother aggressively treated.

25. I went to visit Mrs. Brookshire was found that she did not have an antibiotic drip. I asked the nurse and she advised that the doctor had changed the type of antibiotic and she would get it that afternoon or evening. She also stated that Mrs. Brookshire was not there for treatment, but for comfort care. I was concerned that the nurse did not understand that Mrs. Brookshire was only on that floor because of a shortage of beds. I had Dr. Sheigh paged and expressed my concern. He stated that he had difficulties with the nurses understanding that there was a shortage of beds and he may have Mrs. Brookshire moved to another floor. He also advised that he was considering giving Mrs. Brookshire nutrition, either through an NG tube, IV or stomach feedings. He said that a previous MRI showed that Mrs. Brookshire only had severe arthritis of the spine. Also that an echocardiogram was negative except for some valve damage to her heart, but that this was probably old and had nothing to do with her current condition.

26. I went to Mrs. Brookshire's home to see if I could find any documents that could reveal Mrs. Brookshire's financial status. There had been a key hidden under the air conditioner. The next day a notice appeared on the door instructing any locksmith not to unlock the door for anyone for any reason. It was signed Suzanane Brookshire, POA.

27. I went by the house and took pictures of the 15 large black trash bags Suzanne had thrown out of the house. I loaded them into my Jeep hoping that I could get some information concerning Mrs. Brookshire's circumstances. In the trash bags, I found Mrs. Brookshire's purse, which was empty, her wallet with her last driver's license, her original metal social security card, and various papers. I found overdue bills from Lifeline and Meals on Wheels advising the services were going to be removed because of non-payment. A credit card bill that had $8,200 charges, showing multiple beach and mountain

trips. Another credit card bill showing over $2,000 in charges. I also found evidence that a mortgage had been taken out on the home in March 2003 for $35,000 and then upped to $55,000 in March 2004. Numerous overdue light and phone bills and an overdraft on the checking account. The documents I found are Exhibits 7 and 10. Also discarded were items such as nightgowns, panties, Mrs. Brookshire's favorite sweater, pants, and hairbrush. Family photographs and historical family items were also among these items as well as clothes with the price tags still on them.

28. I went to the hospital to check on Mrs. Brookshire. Suzanne told me that she was dying and she had instructed the hospital to remove everything at midnight. I looked as Mrs. Brookshire's vital signs and they were excellent. I looked at her cather bag and she was putting out urine. Suzanne went further on to tell me that she had gone to the funeral home that day and made the arrangements. She said that she had gotten a silver casket, was only going to have a graveside service, she had picked out a dress for her mother, and wanted to know how to spell my name for the obituary. She said she wasn't going to get any more flowers except for the red roses for the casket spray because it was a waste of money.

29. I sought help for Mrs. Brookshire from hospital officials and the police, but I was told that they could not interfere because Suzanne had the medical power of attorney.

30. I went back to Mrs. Brookshire's room and a man entered the room and said that he was with the Department of Social Services and he needed to be alone with Mrs. Brookshire. He stepped out of the room and asked the nurse if there was a confidential place he could speak with me. I met with Paul Lawrence, DSS Adult Protective Services and shared my concerns and documentation with him. He advised that he would follow up

on it. I explained that my ultimate goal was to have Suzanne removed as POA so Mrs. Brookshire could have medical treatment.

31. I went back to work and later called the hospital to see what room Mrs. Brookshire had been moved to. I was informed Mrs. Brookshire had been placed on a confidential basis by her power of attorney and no information (including room number) could be given to anyone. Not one member of the family or friend would be allowed to know her room number. This was the situation from June 30th until the date she died on July 15th.

32. My husband returned on Sunday and I told him everything that had occurred. On Monday he went to the hospital. He was also denied access to see his mother. No one would allow him to see her. On the way out he ran into his sister. He was finally allowed to spend a few minutes with her. She had been moved again.

33. On Tuesday, my husband received a call that it was felt that his mother only had a couple of hours left to live and if he wanted to see her, he needed to come. He called me and I left to meet him at the hospital. While we were in Mrs. Brookshire's room a nurse came in and told me that I had to leave. My husband became upset and asked the nurse to please speak to Suzanne and to see if I could stay. Suzanne refused to allow me to remain. My husband then advised me that we were both leaving. This was the last time my husband saw his mother.

34. On July 15th, my husband received a call that his mother had passed away.

35. After Mrs. Brookshire's death, I saw documents that show that Suzanne spent Mrs. Brookshire's money on herself. Exhibit 8 are checks that Suzanne wrote for her own benefit from Mrs. Brookshire's account.

36. My husband filed a lawsuit against Suzanne for the things she had done to Mrs. Brookshire, and he received a judgment in the lawsuit, but Suzanne filed for bankruptcy when her Hummer was seized by the sheriff.

37. Exhibit 11 is the will the Cathleen had before Suzanne took her to her attorney's office in March of 2003.

Teresa G. Brookshire
Teresa G. Brookshire

Sworn to and subscribed before me
this 30th day of September, 2005.

Sonja B. Michael
Notary Public

My Commission Expires: 9/08/2008

356
FORSYTH CO,NC FEE:$ 20.00
PRESENTED & RECORDED: 03/21/2003 4:24PM
DICKIE C. WOOD REGISTER OF DEEDS BY:MARSHR
BK2332 P5009 - P5011

EXHIBIT 5

3-20-03

DRAFTED BY: George F. Phillips Box #54
200 West First Street, Winston-Salem, NC 27101

NORTH CAROLINA )
)
FORSYTH COUNTY )

# DURABLE POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, FLORENCE CATHLEEN PARKER BROOKSHIRE, the undersigned, of Forsyth County, North Carolina, have made, constituted, and appointed, and by these presents do HEREBY MAKE, CONSTITUTE and APPOINT my daughter, CATHY SUZANNE BROOKSHIRE, my true and lawful attorney-in-fact, for me and in my name, place and stead, on my behalf, giving unto my said attorney-in-fact full power to act in my name, place and stead in any manner which I could if I were personally present in doing and performing the following matters and things:

(1) To collect and receive, hold, manage and invest any and all funds and properties due or payable to me from any and all sources whatsoever, including accounts receivable, interest, dividends and other stock increments, rentals, employee benefits, insurance proceeds, Social Security, Veterans, retirement, disability, and other benefits, tax refunds and rebates or other assets; including but not limited to the right to have free access at any time or times to any safe deposit box or vault to which the principal might have access as lessee or owner, and including the further right to close or open any safe deposit box;

(2) To execute in my behalf any and all legal documents necessary or customary in the transacting of my business affairs and management and protection of my property as herein provided for, including the right to sell or transfer any stocks or bonds held by me; including the further right to transfer to my attorney-in-fact any stocks or bonds owned by me;

(3) To prosecute and/or defend in my behalf any legal actions or proceedings necessary or appropriate to carry out the intent of this Power of Attorney and to compromise, settle and agree to any terms reasonable in such actions or proceedings;

EXHIBIT 6

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 5209

C O P Y

KIM C. BROOKSHIRE, )
Plaintiff, )
vs. )
CATHY SUZANNE BROOKSHIRE, )
Defendant. )

D E P O S I T I O N

CATHY SUZANNE BROOKSHIRE

500 West Fourth Street, Suite 200
Winston-Salem, North Carolina

Tuesday, September 14, 2004
10:05 o'clock a.m.

Atlantic Professional Reporters
Winston-Salem, NC 27116-1672

NOTES

| Page:Line | Subject Matter | Relates To | Action |
|---|---|---|---|
| | | | |

APPEARANCES OF COUNSEL

William W. Walker, Esq., and
Rebecca L. Smitherman, Esq.
CRAIGE BRAWLEY LIIPFERT & WALKER, LLC
500 West Fourth Street, Suite 200
Winston-Salem, North Carolina 27101

OTHER APPEARANCES

Lynne Patrick, PP, PLS
Craige Brawley Liipfert & Walker, LLC

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STIPULATIONS

Pursuant to notice and/or consent of the parties, the deposition hereon captioned was conducted at the time and location indicated and was conducted before Becky G. Lusk, Notary Public in and for the County of Stokes, State of North Carolina at Large.

Notice and/or defect in Notice of time, place, purpose and method of taking the deposition was waived. Formalities with regard to sealing and filing the deposition were waived, and it is stipulated that the original transcript, upon being certified by the undersigned court reporter, shall be sealed and made available for use in accordance with and pursuant to the applicable rules as amended.

It was stipulated that objections to questions and motions to strike answers are reserved until the testimony, or any part thereof, is offered for evidence, except that objection to the form of any question shall be duly noted herein at the time of the taking of the testimony.

Reading and signing of the testimony was not waived prior to the filing of same for use as permitted by applicable rule(s).

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The witness, CATHLEEN SUZANNE BROOKSHIRE, being first duly affirmed to state the truth, the whole truth and nothing but the truth, testified as follows:

(10:05 o'clock a.m.)

EXAMINATION

BY MS. SMITHERMAN:

Q. Ms. Brookshire, my name is Rebecca Smitherman. I'm an attorney and I represent your brother, Kim Brookshire, in this lawsuit.

And Ms. Lusk, she's a court reporter....

A. Uh-huh.

Q. She's repeating everything that we're saying into that mask, and also tape recording it, and she'll make a typed transcript of what we say.

In this deposition I'm basically going to ask you questions, but I want you to answer to the best of your own personal knowledge -- nothing outside of your own knowledge, just what you know.

A. I can't testify to anything I don't know anything about.

Q. If any of the questions that I ask are unclear to you or, you know, if they don't make sense or they're confusing, just tell me and I'll rephrase them and try to make clear what I'm asking about.

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If you want to take a break or you get tired, just let me know and we'll take a break.

Now, before we get going, I want to tell you that when I ask you questions, I would like for you not to repeat anything that your mother said to you. There's a statute in North Carolina called a deadman's statute that limits when the statements that a person who is now deceased can be repeated in court, and I don't want to waive that or have those statements come in, so I'm going to ask you not to make any of those statements during the deposition -- not to repeat things that your mother has said to you.

Do you understand?

A. Probably most information I would have would be what she told me.

Q. Right. Well, I don't want you to repeat things that she's told you.

The first thing I want to ask you about is just some general information.

Can you state your full name for the record.

A. Cathy Suzanne Brookshire.

Q. And what is your age?

A. I'm 52.

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Q. What's your Social Security number?

A. My brother does not get it, does he?

Q. Well, it will be in the transcript.

A. I do not want him to have my Social Security number.

Q. Well, this is discoverable information and, you know, if you don't answer the question, I'll ask the court to order you to answer the question.

A. I'll have to change my number. 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.

Q. And where do you live?

A. 405 Mica Court.

Q. Is that in Winston-Salem?

A. It's in Winston-Salem.

Q. Have you always lived in Winston-Salem?

A. Uh-huh.

Q. Can you tell me a little bit about your education?

A. Two years at Mitchell College in Statesville, three years at Atlantic Christian College in Wilson.

Q. Have you had any other kind of training other than your college education?

A. On the job, art.

Q. So are you an artist?

Page 9

A. Uh-huh.

Q. What kind of art do you do?

A. Commercial art.

Q. What does that mean?

A. Designing commercial pieces.

Q. Is that graphic design kind of things?

A. Yeah.

Q. Where do you work?

A. I no longer work because I'm not able to. I injured my neck at Hunter Publishing a number of years ago.

Q. At Hunter Publishing?

A. Leaning over a light table 10, 12 hours a day.

Q. So when did you stop working?

A. Roughly in '89, '90.

Q. Okay, and how do you support yourself now?

A. My mom has been helping me for many, many years.

Q. Do you receive any disability checks or any ---

A. --- No.

Q. --- Any money from your job?

A. No.

Q. Do you have any other income ---

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A. --- No.
Q. [redacted]
A. [redacted]
Q. Have you ever been married?
A. No.
Q. Do you have any children?
A. No.
Q. Now, can you tell me about your household family relationship right now?
A. Well, other than the fact that my brother doesn't speak and have anything to do with me for whatever reasons he seems to think. I don't know what his problem is.
Q. Do you have a girlfriend?
A. I have a roommate.
Q. A roommate. Okay.
A. And it's been alleged that that's not a right relationship some kind of way, and I want to set that straight. I have never been weird in my life. I have no intentions of being weird.
Q. What do you mean by weird?
A. Gay, whatever they call it.
Q. What is your roommate's name?
A. Kyle Peoples.
Q. Are you close friends, though?

Page 11

A. She is my best friend.
Q. What is her age?
A. Let's see -- 56, I think.
Q. What is her employment?
A. She has been disabled for a number of years. She had a stroke in 1998.
Q. What was her field before that?
A. She worked at IBM and Eastman Kodak. She had a closed-head injury a number of years ago. She had to quit her job.
She came home, took care of her parents for many years, and then she had a stroke from too much care giving. She had to quit that. And as of this point in time Social Security doesn't give her anything.
Q. She doesn't receive any disability?
A. She has a trust that gives her so much a month.
Q. Okay.
A. That's what she lives on.
Q. How long have you lived with Kyle?
A. I don't know what difference that makes.
Q. How long have you lived with Kyle?
A. We've been roommates for 24 years.
Q. Is Kyle friendly with your family?

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A. My mom has always liked her. She's always been kind to her.
Q. Are you friends with Kyle's family?
A. They're all deceased. Her parents are deceased.
Q. How do you guys divvy up paying the bills?
A. Her trust pays the rent and I pay the lights and the water and the gas.
Q. Okay, do you actually sit down once a month and pay the bills?
A. [redacted]
Q. How long did you live with your parents?
A. All my life.
Q. When did you stop living with them and start living with Kyle?
A. 1980.
Q. Okay, so from the time you were born until 1980 did you live with your parents?
A. Except for when I was in college.
Q. Okay, and then after 1980 you lived with Kyle.
What are your parents' names?
A. Charles Hughes Brookshire and Cathleen Parker Brookshire.
Q. Do you know their dates of birth?

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A. Daddy was September 5th, 1916 and Mom was February 5th, 1922.
Q. What was their education?
A. At the time just ever how far high school went.
Q. Did your father work?
A. Yes.
Q. What did he do?
A. Worked at the post office.
Q. Did he work there his whole life or his whole working career?
A. To my knowledge, that's the only place he ever worked. He was -- before they got married, he was a messenger with Western Union ---
Q. --- Okay.
A. --- Delivering telegrams.
Q. Did your mother ever work?
A. She worked at Summit Street Pharmacy.
Q. How long did she work there?
A. I have no idea.
Q. Do you know when she stopped working there?
A. No.
Q. Do you have -- was she still working there when you were living at home?

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A. No. Dad made her quit. At the time it wasn't cool for mamas to work, so he wanted her to stay at home with his kids.
Q. Did she stay at home when you were a child?
A. Uh-huh.
Q. What was your father's date of death?
A. December 28th, '83.
Q. And what was your mother's date of death?
A. July 15th, this year.
Q. What was your relationship like with your parents?
I know it's a broad question.
A. Up and down like any family.
Q. Were you closer to one of your parents than the other?
A. My dad.
Q. After your father died in 1983 how often did you see your mother?
A. I don't know. Pretty often, though. I don't have a recollection of certain days -- how many days a week or anything. I went over quite a bit.
Q. Did you go visit her at her house?
A. Yes.
Q. Right around the time that your father died in the 80's, what was her medical condition?
Did she have any medical problems then?

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A. To my knowledge, not that I know of. She's been on thyroid pills her whole life. But up until that point I don't know of anything.
Q. Okay.
A. She always kept all those kinds of things pretty secret. She didn't like people knowing all of her business, even to telling us anything. She didn't tell us very much.
Q. What was her psychological state after your father died?
A. Well, like any wife, I guess, you grieve for a long time. She talked about him a lot.
Q. In the '80s, after your father died, did she -- was she able to take care of herself?
A. Oh, yes. She has always taken care of herself.
Q. Was she still able to drive then?
A. Oh, yes.
Q. And did she pay her own bills and take care of her own finances?
A. Uh-huh. She was always very independent.
Q. When did she stop taking care of her own finances?

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A. I don't know, because my brother had POA for a while. I don't know when they did that. I have no knowledge of that.
Q. Did you -- did you do various things for your mother after your father died up until -- up until the point where you were taking care of her most of the time?
A. Uh-huh. Took her out to eat, go to see her a lot, just sit in the yard and talk. She would cook a meal or something and want us to come over. We'd go over and eat.
[redacted]
Q. When did she -- do you -- do you remember when she started needing someone to help her take care of her -- her affairs, her financial affairs, approximately?

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A. I guess two or three years ago. I don't know. Like I said, my brother had POA for a while, so I don't know.
Q. Uh-huh.
A. [redacted]
Q. Where were you?
A. I was here in town, but some bad situations were going on in my life.
Q. So you didn't visit your mother much during that time?
A. I didn't get to see her very much.
Q. When your mother was handling her own financial affairs, do you know whether she had credit card debt during that time?
A. I guess she did. I don't know. She always had credit cards. Always paid bills all my life.
I remember her sitting down writing checks every month, paying stores and different things.
Q. You sat with her while she wrote checks?

Is that what you're saying?
A. I can remember seeing her do it.
Q. Uh-huh.
A. But as far as knowing what was what, she didn't tell things.
Q. Was she living within her means before other people started to help her handle her financial affairs?
A. I know she had a lot of credit at a lot of stores. As to how much anything was, I don't know.
Q. Okay.
A. I didn't keep up with that.
Q. When did Kim start handling her financial affairs? Do you know?
A. I don't know. I just know -- I think for a year or so. I'm not sure. I don't remember any dates.
Q. When he started handling her financial affairs, were you less involved with her financial affairs than you had been before?
A. I wasn't involved with them before.
[redacted]
Q. Did you know Cathleen's neighbors?

A. Don't know them very well.
Q. Did you know Emily Sechrist, one of Cathleen's neighbors?
A. Uh-huh.
Q. Did you know her well?
A. Didn't know her very well. Just see her come and go a lot, just to speak.
Q. Was she friends with your mother?
A. She was friends with Mamma the whole time they lived on Bellview Street.
Q. Who is Kay Brown?
A. It's Mamma's first cousin.
Q. Did she come to see your mother very often?
A. She would come on Thursdays, usually take mom out to eat and then bring her back home. She would stay a couple of hours and then leave.
Q. What was your relationship with Kay? Do you get along?
A. Yeah, when I would see her, I did. Didn't know her very well.
Q. Who is Helen Parsons?
A. My aunt. And she hasn't been around in more than 10 years.
Her and Edith ---

Q. --- Who is Edith?
A. Another sister-in-law, Curtis's wife, which is Helen's brother.
They did some things about my granny's estate a number of years ago, tricked my mom in to signing a paper and gave away her part of the estate. She didn't know what she was doing to sign it. [redacted]
Q. Who is Betty Crotts?
A. Kim's friend's mom.
Q. Did Kyle help you in taking care of your mother when you would visit?
A. Yes, uh-huh.
Q. Did she help you -- never mind.
Now, I would like to ask you about some of your assets.
What kind of car do you have?
[redacted]

[redacted]
Q. And do you own it? Did you just buy it outright?
[redacted]
Q. What color is it?
A. It's a pewter.
Q. And what's the license plate?
A. Sidepokt.
Q. Can you spell that for me?
A. S-i-d-e-p-o-k-t.
Q. How did -- [redacted]

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Q. Do you have a house?
A. I have a house.
Q. Do you own it or rent it?
A. My roommate pays the rent.
Q. But it's rented?
A. Yes, it's a rental house.
Q. Do you own any furniture in the house?
A. I have a bedroom suite that someone else bought me a number of years ago.
Q. Do you have any art in the house?
A. My photographs is the only art I have.
Q. Do you own any other real estate?
A. No, I sure don't. According to the will, I own Bellview Street. My mom gave me that.
Q. Do you have any bank accounts?
A. No, I sure don't.
Q. Do you have any retirement accounts?
A. No.
Q. Any annuities, anything like that?
A. I don't have anything anywhere.
Q. Do you own any jewelry?
A. No.
Q. Did you get any jewelry out of Cathleen's safe deposit box?
A. She gave me jewelry that was in it.

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Q. [redacted]
A. [redacted]
Q. Did Cathleen have a jewelry box at home?
A. She had a lot of jewelry, a lot of what you would call costume jewelry -- department store stuff.
Q. Did she have any other fine jewelry?
A. To my knowledge, no.
Q. [redacted]
A. [redacted]
Q. Have you given anyone your power of attorney to act for you?
A. No.
Q. Have you given anyone gifts of cash since March of 2003?
A. No.
Q. Have you given anyone gifts of jewelry since March of 2003?
A. [redacted]here's no way in the world I could use it all.
Q. [redacted]
A. [redacted]

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[redacted]
Q. Who was that?
A. A lady at church.
Q. Her name?
A. Joyce Hash.
Q. So do you have any other automobiles other than the Hummer?
A. No. My truck was stolen a couple -- three years ago and my mom told me then that she planned to replace it for me at some time.
Q. Please don't say things that your mother told you.
Are you in the process of selling Cathleen's house?
A. Yes. I had permission to do that.
Q. Are you selling it to the highest bidder?
A. It went to a man who wanted to purchase it, and the purchase price was based on what other pieces of real estate in that general area were going for in the last year.
Q. Do you know the buyer?
A. No, I don't know him.
Q. Did you receive any offers higher than the offer that he submitted to you?

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A. I received one, but we had already agreed with this man, and you can't -- once -- I don't know the ins and outs of legal real estate stuff, but once the deal was made, I couldn't take any more offers.
Q. Are you using a real estate company?
A. Yes.
Q. What company?
A. ReMax.
Q. Do you have a specific agent?
A. His name is Welton Loftin.
Q. Where do the proceeds of the sale of the house go, in your understanding?
A. It hasn't gone anywhere yet, because they locked it up to where it couldn't close on the 31st like it was supposed to.
Q. But where do you believe they would go?
A. To pay off the home equity line that was on it, to pay for the funeral and to pay off the other credit cards. It was going to go to pay off all her bills.
Q. What, if anything, is left -- where would that go?
A. Well, since it was mine, it would be put in my bank account.
Q. Do you have a bank account?

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A. Right now it's in the negative.
Q. [redacted]
A. [redacted]
Q. Whose name is the house titled in now? Do you know?
A. It was in my mom's name, but according to the will, that on her death, it would be in my name.
Q. Have you made any purchases of over $1,000 since March of 2003?
A. Yes -- my truck.
Q. Anything else?
A. [redacted]
Q. What were they?
A. [redacted]
Q. Anything else?
A. That's all.
Q. Now, I'm going to ask you some questions about when you had your mother's power of attorney and were acting as her -- I'm going to use the word, attorney-in-fact. That's kind of the name for you when you're -- when you're using a power of attorney.
A. Uh-huh.
Q. Generally what did you do as

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attorney-in-fact for her?
A. Kept the bills paid, bought her drugs for her, go to the grocery store all the time. She always wanted so much cash every month and so I would get her cash.
Q. How much cash -- how much cash did she want per month?
A. Usually, three or $400.
Now, what she did with it, I don't know. That's her business.
Q. Did you go to the bank and get the cash for her?
A. Yeah. Most of the time, when she got to where she couldn't walk very well, she would send me to go and get it for her.
Q. [redacted]
A. [redacted]
Q. And did you only get the cash when she had enough money to pay for her expenses?
A. Yes.
Q. Did you organize her bills?
A. Tried my best to organize it, if I could get her to put them in one place where I could find

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them. I couldn't always find one. She would mislay something once in a while.
Q. Did you check and receive her mail?
A. She would get the mail in. She was looking after that herself and she always put the bills next to the door.
Q. Did you sign -- sorry.
A. Or supposed to, anyway.
Q. [redacted]
A. [redacted]
Q. [redacted]
[redacted]
Q. How many credit cards did Cathleen have when you took over as attorney-in-fact?
A. She had two.
Q. Did you get any additional credit cards while she was attorney-in-fact -- while you were attorney-in-fact? I'm sorry.
A. No. She'd put my name on the ones that she had so that I could use them.
Q. What bank accounts did she have when you took over as attorney-in-fact?
A. Truliant and Bank of America.
Q. Were those the only two?

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A. Uh-huh. To my knowledge, that was the only two.
Q. Were there any balances on her credit card when you took over as attorney-in-fact?
A. I don't recall what they were.
Q. Do you think there were balances?
A. I know there was on Truliant. [redacted]
Q. What does that mean, reinstating it?
A. She ordered a new card, started using it again.
Q. Were you authorized to use her credit cards?
A. Yes, I was an authorized user.
Q. Did you have one under her account with your name on it?
A. She went to the bank and had the lady fix it so that I could have a card with my name on it to use.
Q. Did Kyle ever help you manage Cathleen's financial affairs?
A. No. She had no knowledge of anything my mom did financially.
Q. Did you pay the taxes on her home when you were acting as attorney-in-fact?

A. It was my understanding 2003 was paid when I took over, but I found out this spring that it wasn't, and so I had to pay last year's taxes this time.
Q. Did you pay for the lifeline that was in Cathleen's home?
A. She paid for it for a long time, and she complained with it the whole time because she kept setting the thing off and that buzzer would scare the daylights out of her. And she told me one day, she said, I'm going to call and get this thing undone. I said, well, Mom, you need to keep it. You might need it in an emergency. She said, well, I'm tired of this thing. I want it out of here.
Q. Well, I'm going to ask you again not to repeat things that she said to you, and to -- I don't waive any objections to those -- to those statements.
[redacted]

[redacted]
Q. Did you get the equity line after the Alleghany County property had been sold?
A. Yes. She did that.
Q. And when was the Alleghany County property sold?
A. Last August.
Q. Did you go through a real estate agent to sell it?
A. Yes.
[redacted]
Q. Who was the closing attorney in that -- in that transaction?
A. I don't remember. I would have to look it up.
Q. Do you remember who the real estate agent that you worked with was?
A. Welton Loftin. He was with Prudential at the time and a lady that lives in Alleghany County --

I can't remember her name. She works for Scenic Realty. I'll think of it in a few minutes.
Q. Let me know if you do.
A. Yeah, I'll let you know.
Q. Did you sign the documents as power of attorney when you -- [redacted]
Q. Was that in Cathleen's account?
A. Yes.
Q. And where are the proceeds of that sale now?
A. [redacted]
Q. [redacted]

[redacted]
A. Well, I don't know how to explain it if I don't tell you that.
Q. What monthly expenses did you pay for Cathleen when you were paying her bills for her?
A. All her bills that would come. Dentist, eye doctor, all the household bills.
Q. Did you make sure that they were all paid on time?
A. Uh-huh.
Q. As power of attorney or acting under the power of attorney, did you ever access Cathleen's safe deposit box?
A. Yeah. She put my name on it.
Q. Where was the safe deposit box? What bank was it at?
A. It was at [redacted].
Q. Which branch?
A. On Stratford Road.
Q. When did you access it?
A. Whenever she wanted something out of it.
Q. Did you remove things from it?
A. When she would give me permission to go get it out, yes.
Q. What did you take out of it?

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A. I didn't bother it otherwise.
Q. What did you take out of it?
A. The deed for the land.
Q. Anything else?
A. The [redacted] that she had in it.
Q. Can you tell me about the bonds?
A. She cashed those out a couple of years ago.
Q. How many were there?
A. [redacted]. I don't remember an exact number, as far as counting them.
Q. Did you remove anything else from the safe deposit box?
A. No.
Q. Was there any jewelry in the safe deposit box?
A. Yes. There was jewelry in it the whole time.
Q. Did you ever remove that?
A. After she died, yes.
Q. What did you take out of the safe deposit box after she died?
A. Two pieces of jewelry.
Q. What were they?
A. Just a couple of necklaces.

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Q. Was there anything else in the safe deposit box?
A. There's a bunch of stuff in it.
Q. What else was in it?
A. [redacted]
Q. What kind of silver?
A. I don't know. I've not even looked at it.
Q. Well, where is it now?
A. [redacted]
Q. [redacted]
A. Oh, yes.
Q. What else is in the safe deposit box?
A. Lots of old documents, old birth certificates, deed to Bellview Street, old -- my dad's discharge papers from the Army, all sorts of old papers, old checks.
Q. Is there anything else?
A. Some coins that she gave me several years ago.
Q. Are those things that are still in the safe deposit box or are those things that were taken out of the safe deposit box -- the coins?
A. Except for coins, that stuff is still there, it's all there.
Q. So the coins aren't there?

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A. Huh-uh.
Q. Okay.
A. No. She gave those to me.
Q. Is there anything else in the safe deposit box?
A. To my knowledge, that's all that's left in it.
There's a couple of pairs of earrings in it.
Q. And is her name still on the safe deposit box card or is it just your name?
A. My name is on it now.
Q. After Cathleen died when did you clean out her house?
A. After I found out from the doctors that she wasn't going to be coming home ---
Q. --- When was that? Do you remember?
A. --- I started -- I had to clean the refrigerator out. I started giving away her clothes and stuff. You don't keep clothes.
Q. Do you remember when that was?
A. I only had a chance to go over there maybe a half a dozen times the whole month of June. I would have to go get the mail in and check on everything.

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Q. Did you continue to pay Cathleen's bills while she was in the hospital?
A. Yes. They were paid late, but yeah, I got them paid. I was sitting with her for 27 days.
Q. Is there anything in the house now ---
A. --- I was there every day.
Q. I'm sorry.
A. Furniture.
Q. What furniture?
A. Everything that was left of her furniture with the exception of two specific things she gave me.
Q. What were they?
A. Grandfather clock and a little wooden table that was in the living room.
Q. What else did you throw away from the house?
A. All the junk that was there. She was a collector. She kept everything -- every card from every person she ever knew, every letter from every person she ever knew, every piece of old clothes I think all of us ever had. Just everything.
Q. Did you keep any antiques from the house?
A. What would that be?
Q. Well, I'm just trying to figure out what

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you kept inside the house versus what you threw away. I'm trying to figure out what is inside the house now.
A. Just pieces of furniture is there now.
Q. No personal effects?
A. No, not anymore.
Q. Photographs?
A. Threw out a lot of old photographs. I kept a lot of my pictures.
Q. In looking at the account records, it seems like there are a lot of bounced checks in Cathleen's account.
Was there a problem with that?
A. [redacted]
Q. Did you keep a ledger or any accounting information while you were acting as her attorney-in-fact of the things that you did?
A. No. Just have whatever the bank record is, the only record there is.
Q. Okay. Now, when you took over as attorney-in-fact, what was Cathleen's health like?
A. She was in good shape, stubborn as always.
Q. Did she have any medical conditions?
A. She had eye drops that she used.

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Q. Do you know what those were?
A. She had -- for glaucoma, to prevent glaucoma. She was diabetic, and I only learned that about a year and a half ago.
Q. What did she do for that?
A. Like I said, she always kept all her medical things -- she played her cards real close. She didn't tell me a lot of things.
Q. Did she take any medication for diabetes?
A. Yeah. She was on Glucophage.
Q. Did she have any other medical conditions?
A. I think she was on something called Glyceride, but I don't what it was for.
Q. Any others?
A. Not that I know of. She was always complaining of something hurting.
Q. Did you help to give her her medication?
A. No, she took her own medications herself.
Q. Did you purchase it for her?
A. I would go and get it for her, yeah.
Q. Did you make sure that her medications stayed refilled?
A. Uh-huh.
Q. How often did Cathleen get out of the house, for example, in 2004?

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A. I took her out to eat a couple of times a week. I took her to the mountains at least every other week.
Q. How often?
A. She liked to go to Boone to the Daniel Boone Inn and eat, so I would take her up there. We would go eat.
Q. Did she go out of the house on her own?
A. I took her to go get her hair fixed.
Q. Any other places you took her?
A. She would take a taxi once in a while to go to the grocery store, if I couldn't go, if I had something else to do.
Q. How often did she do that?
A. I don't know. She was one of these people that would go to the grocery store three or four days a week. She didn't buy a whole lot of stuff at one time.
Q. And that was in 2004 ---
A. --- Uh-huh.
Q. --- She was still going to the grocery store ---
A. --- Uh-huh.
Q. --- Three or four times a week?
A. Yeah. I would take her over there and she

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would get in a little cart and ride around the store, pick out what ever she wanted to eat.
Q. But [redacted]
Q. What about ---
A. --- She had a wreck several years ago.
Q. What year was that? Do you remember?
A. I don't remember. But she ran a stop light on Stratford Road and tore her car up, and I had already seen her several months earlier run another stop light at another spot on Stratford Road and it scared the daylights out of me.
Q. Is that when she stopped driving?
A. And after she had that wreck, I got after her big time. I said, you've got no business in a car. I don't want you to get hurt in a car. I don't want you driving anymore.
Q. Is that when she stopped driving?
A. She argued with me off and on after that. She kept threatening to go buy a car, but she never did. I would always try and go and take her somewhere whenever I could. If I couldn't, she would get a taxi and go to the store or something.
Q. Do you remember when that was, that wreck?
A. I have no idea. It was two or three years

ago. I don't remember exactly when.
Q. Did she have an arrangement with the taxi company to come and pick her up and bill her for it or did she pay as she went?
A. She had an arrangement with a taxi cab for a while to pay the bill once a month, and then she didn't want to do that anymore because I was taking her more often -- taking her places. And a lot of times I would show up and the cab would be sitting there waiting for her, and so I would send the cab on and take her wherever it was she was going.
Q. Did Cathleen's mental condition ever decline?
A. To my knowledge, no.
Q. How often did you visit Cathleen in 2004?
A. Several times a week, at least every other day. If I didn't go by there, I would call and see if she needed anything.
Q. How about in 2003?
A. Then, too. I was over there all the time.
Q. Did Kyle come with you when you would visit?
A. Once in a while she would come. More often than not, she would stay home.
Q. Did Cathleen's neighbors come visit her?

A. As far as I know, most of them stopped by every day or so. Usually whenever she was sitting out in the yard, they would stop and sit in the yard for a while.
Q. Did you ever leave Cathleen alone without visiting her?
Were you ever gone and did not come to visit her?
A. I would go backpacking for several days a couple of times. Yeah, I was gone for a couple of weeks last fall.
Q. Any other times?
A. A week this year.
Q. When you were -- were there any other times that you would go for longer periods without visiting her?
A. Huh-uh, no. I was always going by.
Q. Now, I want to ask you about the will that was done in March of 2003, and I would like to mark this as Exhibit 1. And here's one for you to look at, Suzanne.
(* Exhibit 1 was marked *)
Q. Do you recognize this?
A. Yes.
Q. What is it?

A. It's my mom's will that she made last year.
Q. Were you with her when she made it?
A. I took her down there. She called me and asked if I would take her down to her attorney.
Q. And who is her lawyer that you took her to?
A. George Phillips.
Q. Do you know him?
A. Phillips & Badgett.
Q. Do you know him?
A. I've only seen him a few times through the years. I don't know him well.
Q. Have you ever had a conversation with him?
A. Whenever I would take mom down there, I've had conversations with him.
Q. Did you know what she was doing in her will?
A. No, I did not.
Q. Has Phillips ever drafted any documents for you?
A. For me personally, no.
Q. Does Kyle know Mr. Phillips?
A. I remember her going to him several years ago for something, but I don't know what. I remember

her mentioning his name one time. I don't keep up with her affairs.
Q. Did you have any conversations with Phillips regarding the provisions of Cathleen's will?
A. No. I didn't know what was in it.
Q. Did she go to see Phillips anytime before the day that you drove her down there to sign this will?
A. If she did, I don't know. She called him often and talked with him on the phone.
Q. Did you ever hear her have conversations with him?
A. No.
Q. Were you ever there when she called him on the phone?
A. Again, that's one of those things she told me. That's all I have to go on.
Q. Do you know what the contents of this will is saying?
A. I do now. I didn't know at the time.
Q. Does this will appoint you as the executor of her estate?
A. Yes.
Q. Now, looking down at article three, the bottom of page one ---

A. --- Uh-huh.
Q. --- What does this will do with the -- this 831 Bellview Street, is that Cathleen's residence?
A. Yes.
Q. And what does it do with that?
A. It gives it to me.
Q. And then to the next page, the 10 acre tract, is that the Alleghany County property?
A. Yeah. That was the land that she had at the time but she decided to sell.
Q. So this -- when -- when was the sale again?
A. It was last summer.
Q. When was the property sold?
A. Last summer.
Q. And this section C, it says I give and devise to my said daughter the Jeep automobile owned by her but currently titled in my name.
What does that mean?
[redacted]

[redacted]
Q. Now, aside from Cathleen's house and everything in it ---
A. --- Uh-huh.
Q. --- Which is section A and the Alleghany County property, which is section B, and [redacted] Put that money on the truck [redacted]
Q. So you sold the Jeep and used that money to buy the Hummer?
A. Uh-huh, yeah, and put that toward it.
Q. In addition to the Alleghany County money?
A. Yes.
Q. Okay. Aside from these items A, B and C in this article three of the will, what was there in Cathleen's estate?
A. Just the things that were in her house. I don't know of anything else any place.
Q. So in section D it gives everything else in equal shares to you and your brother.
A. Uh-huh.

Q. So under this would your brother get anything?
A. She wanted him to have some things if he wanted it. But he always would tell her that he didn't want anything -- he didn't want a stick of anything that was in that house. And he said that to me two years ago, that he didn't want anything that was there. But I told her, if he ever changed his mind, I would see to it that he got something.
Q. Now, are you aware of a previous will to this one? Have you ever seen a previous will to this one?
A. No, not until this summer.
Q. What do you mean this summer? When do you mean?
A. After Mom died, I went to the lockbox and took the will out to bring it to the attorney's office.
Q. What was the ---
A. --- Which was what I was told to do.
Q. Where was the lockbox?
A. At Bank of America.
Q. Oh, it's the safe deposit box?
A. Uh-huh, yeah.
Q. So there was a will in the safe deposit

box?
A. That's where one usually keeps a will.
Q. Was there more than one?
[redacted]
Q. Did you read the other one?
A. No.
Q. Do you think that the will that was signed in March of 2003 was favorable to you?
A. Like I said, I didn't know what was in it when she made it.
Q. Having read it now, do you think that it was favorable to you?
A. Yes.
Q. Now, I want to look at some records that we received from Truliant that are just bank account summaries and that kind of thing.
A. Uh-huh.
MR. WALKER: Put a staple through that exhibit there.
MS. SMITHERMAN: And I would like to mark this stack as Exhibit 2.
(* Exhibit 2 was marked *)
Q. (Ms. Smitherman) Please turn to the

second page, which is an account from March of -- an account statement for March of 2003.

Was this -- is this an account statement from your mother's checking account?

A. Looks like it is.

Q. Now, did she have more than one checking account?

A. She's always had more than one checking account.

Q. Where were her checking accounts?

A. Truliant and Bank of America.

Q. On the next page of that March statement -- actually, on the last page of it, it refers to a line of credit. It says new loan, LOC.

Did you know about that line of credit? See right here.

A. No.

Q. Do you know what it was for?

A. No.

Q. Were you writing checks from her account during this time in April of -- yeah, in April of 2003?

A. For three or four months there she carried checkbooks and she was writing checks, as well as I was paying stuff. And she wrote checks several times

that caused it to bounce, and so I had to get her checkbook to keep her from bouncing things so I could keep track of it all, everything myself --

Q. --- Where would she go ---

A. --- And move it to one checkbook.

Q. Where would she go to write checks and how would she get there?

A. Usually, the store.

Q. What store?

A. Grocery store.

Q. Is that the main place that she went?

A. Uh-huh.

Q. Did she go to any other stores?

A. Unless I took her, no, unless she went places without my knowledge. She didn't always tell me everything she did.

Q. Turn to the next page, which is a statement ending May 31st and there's -- about midway down the page there's Sports Authority, which is a bounced check, and I was just wondering if you knew why she would have written a check to Sports Authority?

A. She got an air mattress for me.

Q. So that was for something for you?

A. Yes.

Q. Okay. On May -- if you look down further on the next page, on May 19th there was an addition to the line of credit.

Do you remember that being taken out, that additional line of credit?

A. Is this the right page?

Q. Uh-huh. It's right in here.

A. No, I don't remember that.

Q. This is the -- at the back -- I'm sorry. It's so inconvenient.

At the back of this packet, this one is a May 19th application for a line of credit.

A. Uh-huh.

Q. Could you look at that, and then look at the second page.

A. My mom did that for me.

Q. Did you sign that application?

A. Yes.

Q. Was Cathleen with you when you signed it?

A. Yes. She went with me every time anything was signed.

Q. Was Kyle with you?

A. No.

Q. On the next part of this there is another increasing the line of credit on May 22nd.

Did you sign that one?

A. Yes.

Q. Did you put the power of attorney designation?

A. No, I didn't write it on there.

Q. Why didn't you do that?

A. I guess I forgot.

Q. Was Cathleen there with you?

A. Yes, but I always wrote that on everything else that I signed.

Q. Please turn ahead to the next one. This one was June 3rd, 2003.

Is this another increasing the line of credit?

A. It was going to be, but it didn't go through.

Q. Why didn't it go through?

A. I don't know what their reason was, but it didn't.

Q. Was Cathleen making the payments timely one the lines of credit?

A. Yeah.

Q. Did you sign that application in June 3rd of 2003?

A. If that's this one, yeah.

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Q. Yeah.
A. Yeah.
Q. Did you put the power of attorney designation at the bottom of that page?
A. No. Like I said, I forgot it.
Q. That's it for those.
A. But the girl at the bank didn't say anything.
Q. Was Cathleen with you when you signed that?
A. Yes, she was with me. I told you she was with me every time I did something.
Q. Now, let's go back to these accounts that we were looking at.
The next one is June 30th, 2003, and there are more bounced checks on this one.
When did you take Cathleen's checkbook away so that she would stop writing additional checks?
A. Last year.
Q. Do you remember when?
A. No, I don't remember when.
Q. By last year, do you mean in 2003?
A. Sometime in '03. I don't remember when.
Q. Now, in June of 2003 there shows up a home

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equity line.
When -- what was the home equity line taken out for?
A. My mom has been helping me financially for years. There were some bills that had to be paid and she took out a loan to help me do that.
Q. How much were those bills?
A. They were several thousand dollars.
Q. Can you remember more specifically how much they were?
A. I don't remember specific numbers, no.
Q. Was it more than $10,000?
A. Yes.
Q. Was it more than 20,000?
A. I don't remember it being more than $20,000.
Q. The balance of the home equity loan was -- in June it was $34,200.
Do you know what all that was used for? A portion of it was used for those debts ---
A. --- To pay debts.
Q. Do you know what the rest of it was used for?
A. Living expenses.
Q. For Cathleen?

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A. For her and for myself.
Q. Do you remember who signed the application for the home equity loan?
A. She was with me. She had to sign those.
Q. Now, moving ahead through these, do you know what Faye's Wonderland is?
A. I don't remember. I'm not sure.
Q. Do you think that you took Cathleen's checkbook away before the end of the year in December?
A. It was sometime last winter. I'm not sure when.
Q. Do you think it was before the end of the year?
A. I think so. Like I said, I'm not sure exactly when.
Q. Now, the home equity line stayed -- the balance stayed about the same, according to these records, until April of 2004, which is a pretty good ways down into these. And then in April of 2004 the balance increased to $54,000.
What was the $20,000 increase for in April of 2004 in the home equity line?
A. To pay some bills, and she got some additional things for my truck.

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Q. What kind of bills were paid?
A. Obligations that I had that she wanted to take care of for me.
Q. What kind of obligations?
A. Some bills I had. I don't distinctly remember what.
Q. Were they like utility bills or credit card bills?
Do you remember what kind of bills they were?
A. Maybe some credit card payments.
Q. What kind of things did she get for the truck?
A. She bought some wheels and tires for it.
Q. And those two things together totaled about $20,000?
A. No. Those things were about six, $7,000. That's all.
Q. What was the other 13 or $14,000 for?
A. Living expenses and paying bills.
Q. Whose living expenses?
A. Mine.
Q. Do you remember whether anything had to be signed to increase the home equity loan?
A. Yes. I had to sign a document for that.

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Q. Was Cathleen with you when you signed it?
A. She did not go that particular day, but she knew about it. I had her permission to do it. I didn't do anything I didn't have her permission for.
Q. Now, in the Truliant documents there was a release form, which is, again, in the back -- I should have done a better job organizing this -- for the Department of Social Services -- and you signed -- is that your signature as power of attorney on that form?
A. Yes.
Q. What was that form for?
A. I don't remember what that was for.
Q. Now, one of the things in these records is a copy of your power of attorney.
A. Uh-huh.
Q. Could you look at that and tell me whether that's the power of attorney that you used to conduct your mother's affairs?
MR. WALKER: Staple it. Oh, I'm sorry. It's a part of the....
MS. SMITHERMAN: It's a part of the packet.
THE WITNESS: Yes.
MS. SMITHERMAN: And that's part of

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the Exhibit 2 packet.
MR. WALKER: Maybe it would be smart to mark it separately at some point.
MS. SMITHERMAN: Okay.
Q. (Ms. Smitherman) Now, we're going to flip back again.
These are the -- the credit card statements from Truliant, and I just want to ask you about some of the charges on the credit card about what they were for and that kind of thing.
A. I took my mom on a couple of trips last summer. I took her to the beach and I took her to Gatlinburg -- numerous small trips, one-day trips to the mountains.
Q. On the July 25th, 2003, the first charge on there is from Mount Rogers Outfitters ---
A. --- Uh-huh.
Q. --- For $108.
Do you remember what that was for?
A. I took my mom to Damascus to eat and to shop. She bought me some clothes.
Q. So was that -- was that mainly clothes for you?
A. Yes.
Q. And then ---

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A. --- She's always bought most of my clothes through the years.
Q. And then there is a charge for NAPA Auto Parts.
Did Cathleen have a car?
A. No, but I had her permission to use it if I needed something.
Q. So was that for your truck, that charge? It's the second one.
A. Yes, probably so.
Q. The next one is Great Outdoor Provision Company and it was on July 3rd.
A. Uh-huh.
Q. And it was for $315.44. Do you remember what that was for?
A. Clothes.
Q. Clothes for you or for Cathleen?
A. For me. Like I said, she always bought me clothes that I needed or wanted.
Q. Was Cathleen with you when you went to that store?
A. A lot of trips, yes, she was.
Q. Was she always with you when you went and used her credit card?
A. Not every time, no.

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Q. There are three charges for Mast General Store in Valle Crucis on July 5th.
Do you remember what that was?
A. My mom bought her some clothes on that trip.
Q. So the charges at Mast General Store were for her clothes?
A. Yes.
Q. Okay.
A. She bought a number of things there in the last few years.
Q. Triad Photo Center, do you remember what that was for?
A. Pictures.
Q. Were they pictures for Cathleen or were they for you?
A. My pictures, but I made pictures of her, so yes, they're for pictures.
Q. The next one is another one for Great Outdoor Provision Company for 18.99.
Was that something for you again?
A. I don't remember. I don't know.
Q. The CVS, do you know what that was?
A. It's my mom's drugs.
Q. Was it consistently that price every

month?
A. It varied a little bit every month depending on what she had to have.
Q. The next charge is for Omega Sports for $150 -- actually 149.78.
Do you remember what that was for?
A. Probably some sport tops.
Q. Would that be for you or for her?
A. That would be for me.
Q. The next one on there is St. Peter's World Outreach?
A. Uh-huh.
Q. What is St. Peter's World Outreach?
A. It's my church.
Q. Do you make donations to it personally?
A. Occasionally, yes.
Q. Was Cathleen a member of the church?
A. No.
Q. Is it a charity?
A. It's a church.
Q. So do you get to write off the donations that you make to it on your taxes?
A. I don't ever do that.
Q. What denomination is it?
A. It's interdenominational.

Q. Does it have a mission?
A. Yes. Every church has a mission statement.
Q. Do you know what theirs is?
A. No. I cannot quote it.
Q. Do you have a general idea of what it is? I'm just curious about this place.
A. I don't know.
Q. Did Cathleen support the St. Peter's World Outreach?
A. Yeah. She knew a number of people who were there.
Q. Do you know the people who run it?
A. Yes.
Q. Do they know you?
A. Uh-huh.
Q. Now, this charge on here, do you know what that was for?
A. For what?
Q. The charge for St. Peter's World Outreach on the credit card.
A. A bible.
Q. Did they -- was that for you or for Cathleen?
A. That was for me.

Q. The next charge on there is for Doug Brendle's. Do you know what that's for?
A. That's a health food store -- vitamins.
Q. Were those for you or for Cathleen.
A. And I bought Mom vitamins several times, and I bought me vitamins.
Q. The next one is Oyster Bay Seafood Restaurant?
A. Uh-huh.
Q. Did you take Cathleen there?
A. I took her there frequently. If I didn't take her, I would bring her a senior catfish with french fries.
Q. There's one on here for Pilot House Restaurant in Buxton. Where is that?
A. It's on the Outer Banks.
Q. Did you take Cathleen there?
A. That's the trip to the beach we went on last year.
Q. Was there only one trip to the beach that you went on last year?
A. I took her two or three years ago. I took her last year. Took her to the mountains. We always went somewhere several times a month.
Q. But did you only go to the beach one time

last year?
A. Uh-huh. We only had a chance to go once.
Q. Now, there's a charge down here for Kitty Hawk Kites, Carolina Outdoors or something, for 108.55.
Do you know what that was for?
A. A couple of pairs of shorts and a couple of T-shirts.
Q. Was that for you or for Cathleen?
A. Those are for me.
Q. And the next one on there is Birthday Suits?
A. That's for some clothes.
Q. Was that for you or for Cathleen?
A. I bought some shirts.
Q. For you?
A. Uh-huh.
Q. Let's see. And then there are -- on the next page, there are three more Kittyhawk Kites from charges.
Do you know what they were for? There's one, two and the third one is at the bottom.
A. Probably some clothes.
Q. Were those clothes for you again?
A. Yes.

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Q. And that was the trip that you took to the beach with Cathleen?
A. Uh-huh.
Q. The next one I want to look at is the November 2003 credit card statement. [redacted]
Q. And then the next one is December 2004 (sic). There are charges for [redacted]
Q. There's a charge for [redacted]
Did Cathleen have any pets?

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A. Not recently. [redacted]
Q. Now, have Cathleen's credit cards been paid off yet?
A. No. I was going to do that when the house closed two or three weeks ago.
Q. And has the equity line been paid off?
A. No. That was going to happen when the house sold.
MS. SMITHERMAN: That's all the questions I have for the Truliant documents. I'll give these to you.
THE WITNESS: Can we take a break for a couple of minutes?
MS. SMITHERMAN: Sure.
MR. WALKER: Sure.
Go off the record.
(11:12-11:21 a.m. - recess)
Q. (Ms. Smitherman) Okay, Ms. Brookshire, the next thing I want to ask you about is some unpaid bills.
You said earlier that you made sure that Cathleen's bills were paid. I want to show you this,

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which I would like to mark as Exhibit 3....
(* Exhibit 3 was marked *)
Q. Which is a letter from CVS regarding an overdue prescription.
Did you see that letter?
A. Yes. I went and got it for her.
Q. Okay.
A. She always kept things extra and she had extra pills in her bathroom cabinet. Even when something was due to be filled, she still had a number of things in the cabinet ---
Q. --- The next ---
A. --- She would fall back on.
Q. The next thing I want to show you is a Bank of America credit card statement from August 2003, and I would like to mark that as Exhibit 4.
(* Exhibit 4 was marked *)
MR. WALKER: You need to write the number.
You don't have to give it to the court reporter. Staple it.
Q. (Ms. Smitherman) Could you look at that, please.
Now, I wanted to go through the charges on this one like we did on the other one to see what is

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what.
First, there's a -- there are some finance charges and some overdraft protection, looks like, to a checking account.
Was that where the checking account went over and then the overage was put on the credit card?
Do you know what that was?
[redacted]
Q. Okay.
A. And my mom set that up.
Q. Right here is one from Kitty Hawk Kites again. This one is in Avon, North Carolina.
Is that different than the one in Hatteras? Do you know?
A. They are a chain of stores out there. There's three or four of them.
[redacted]
Was that for -- for you again?
A. Yes.
Q. There's another charge for Dillon's Corner in Buxton. What was that? It's the next one down.

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A. Some souvenirs for people at home.
Q. Were they for you -- were the souvenirs ones that you purchased or the ones that Cathleen purchased or ---
A. --- She wanted to get a couple of things. I got a couple of things.
Q. So that was for -- some of it was for you and some of it was for her?
A. Yes.
Q. There's one for Ride the Wind in Ocracoke. What was that?
A. That's a shop out there.
Q. Do you know whether that charge was for you or for her?
A. Probably for me.
Q. Let's see, there is Sebago Watersports for $88, a little bit farther down.
Do you know what that was for?
A. It was for a boat trip around Pamlico Sound.
Q. Did Cathleen go on that trip?
A. No.
Q. Who went on the trip?
A. My roommate and I and about eight or 10 other people.

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Q. Was this payment just for your and your roommate's tickets?
A. Yes, that's for tickets.
Q. Was Kyle with you on this -- on this whole trip?
A. Yes, she went, too.
MR. WALKER: Where were you staying?
Q. (Ms. Smitherman) So where did you stay?
A. The Holiday Inn.
MR. WALKER: In what town?
THE WITNESS: Hatteras Village.
Q. (Ms. Smitherman) Did you all stay in one room?
A. Yes. We've been to the Outer Banks a couple of times in the last four or five years.
Q. So were all the restaurant charges meals for you and Cathleen and Kyle?
A. Uh-huh.
Q. Did Kyle pay for anything on the trip?
A. Yes, whatever souvenirs she got.
Q. Did Cathleen pay for everyone's room and food on the whole trip?
A. Sam paid me back for some of the food.
Q. Who is Sam?
A. That's Kyle's nickname, Sam.

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Q. Oh, okay. But she paid you back, not Cathleen?
A. Yes, she paid me back.
Q. This charge for Oregon Inlet Fishing Center in Nags Head, what was that for? It's right there.
A. T-shirts and some food -- some snack food.
Q. When you all went on the ---
A. --- A T-shirt and some snack food.
Q. Okay.
A. I only bought one shirt there.
Q. Was -- who was the T-shirt for?
A. It was mine.
Q. When you all went on the ---
A. --- I've always collected T-shirts ---
Q. --- Okay.
A. --- Different places.
Q. When you all went on the boat trip, what did Cathleen do during that time?
A. Just waited.
Q. Where did she wait?
A. There's a restaurant at the dock right there called Jolly Roger. I think the trip lasted about an hour and a half.
Q. Okay. Now, here's a charge for the

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Holiday Inn Express. Is that where you stayed?
A. Yes.
Q. How many nights did you stay? Do you remember?
A. That's for a week. I think five nights.
Q. And that was for everyone's lodging?
A. Uh-huh.
Q. Yours and Kyle and Cathleen?
A. Yes.
Q. Hatteras Landing Provision -- it's the one under the Holiday Inn?
A. Uh-huh.
Q. Do you remember what that was?
A. Food. Food and snacks.
Q. Farther down there's one for Kitty Hawk Sports for $390.
Do you know what that one was?
A. That was for clothes.
Q. Clothes for Cathleen or for you?
A. Those are mine.
Q. Were any of those clothes for Kyle?
A. No.
Q. Then the next one down is for Kitty Hawk Kites and it's for 58.84.
Do you know what that was?

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A. A couple of T-shirts.
Q. Were those for you?
A. Yes. Some of their shirts are not cheap. Some of them are about 25, $30 apiece.
Q. Farther down there's a charge for a Comfort Inn in Nags Head. What was that?
A. We spent the night up there.
Q. And again, that was for you and Kyle and Cathleen?
A. Uh-huh.
Q. And ---
A. --- Spent the whole day getting that far, and it was too late in the day to try and go any further, so we just spent the night.
Q. The next one that I want to ask you about is Kitty Hawk Kites for $105.88? What was that for?
A. A jacket and a couple of T-shirts.
Q. For you?
A. Yes.
Q. There are several charges in here for gas stations. Were those for the gas to pay for the trip?
A. Yeah.

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Q. Were you all in the Hummer?
A. No, I had the Jeep then.
Q. Okay. Again, there's -- on the next page of this there are finance charges and overdraft charges.
Did you know that you were -- that you were bouncing checks in the checking account at that time?
A. I knew of a couple that bounced, but I took care of it right away. I'm not exactly the greatest mathematician in the world.
Q. It looks like you were in Duck, North Carolina, on July 13th, and then on July 17th you were in Tennessee -- or July 19th in Tennessee. Is that right?
See, there's the Duck one and then Tennessee is down here.
A. Yes. That was a trip to Gatlinburg that we went on.
Q. Who went on that trip?
A. Just me and my mom.
Q. Kyle didn't go on that one?
A. No.
Q. What did you buy at the Smoky Mountain Knife Works for $139?

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A. My mom got me a pair of knives for my knife collection.
Q. And the Family Inns of Gatlinburg, was that your hotel?
A. Uh-huh.
Q. The Happy Hiker in Gatlinburg for 111.64, was that for you or for your mom?
A. That was for me.
Q. Okay, and then there are a couple of charges for a place called Take a Hike in Black Mountain, one for $165.79 and one for $18.14. Were those for you?
A. Yes. My mom bought me some things there. She liked to shop.
Q. When you bought these clothes, did you sign the credit card receipt or did she?
A. I signed them. And yes, she went in and went shopping with me.
Q. So she was there beside you when you signed the credit card receipt?
A. All the time.
Q. Why didn't she sign them?
A. Except when I go in a filling station. She didn't want to get out and go in a filling station.

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Q. Why didn't she sign the credit cards if she was there?
A. She didn't want to do it.
Q. The next one is a bill for Triad Photo Center for $425?
A. Uh-huh.
Q. What was that for?
A. A lot of rolls of film.
Q. Were they photographs that you kept?
A. Yes. I'm a photographer.
Q. Again, on the next page, there are some more finance charges and some more -- it looks like -- a finance charge I guess -- is a finance charge where the credit card bill was not paid?
A. Probably where it was three or four days late.
Q. And then there's another -- on the 29th another overdraft protection.
So that's three overdraft protections in this month where money was transferred to the checking account. Is that right?
A. Uh-huh.
Q. The charges for Pet Supplies Plus, was that for your pets?
A. Yes, my dog and my cat.

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Q. And did you pay these credit card bills?
A. Yes, I kept them paid.
Q. That's all I have for that one.
A. I paid it off last year.
Q. When?
A. In August.
MS. SMITHERMAN: I'd like to mark this as Exhibit 5.
(* Exhibit 5 was marked *)
Q. (Ms. Smitherman) This is a letter from Senior Services.
Have you seen that letter?
A. No, I have not seen this.
Q. Okay.
A. I have not seen that.
MS. SMITHERMAN: Should I take it out?
MR. WALKER: No. You can still ask her about the things discussed in there.
MS. SMITHERMAN: Okay.
Q. (Ms. Smitherman) This is -- this is a letter from Senior Services about unpaid -- unpaid fees for services.
Did Cathleen go to Senior Services for anything?

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A. They brought her Meals on Wheels, but she canceled it. She didn't eat 95 percent of the food they brought. She would drink the juice and maybe eat a little of the macaroni, if it was a day there was macaroni on it. Other than that, she never ate it. She would have rather gone to the store and bought her own food and fixed it.
Q. Did you keep the bills paid for Senior Services?
A. Yes, up until the last couple of months.
Q. Why weren't they paid then?
A. I didn't have the bill. Like I said, she mislaid a number of things and I didn't find it until almost too late.
Q. Okay.
A. It got paid once I did find it. But I had a hard time ever getting -- to get her to leave the bills in one spot.
Q. Okay, this is a -- I would like to mark this as Exhibit 6....
(* Exhibit 6 was marked *)
Q. And this is a bill from Lifeline regarding late payment.
A. Yes. I got those people paid off when she called them and canceled it.

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Q. It wasn't disconnected?
A. Yeah. She wanted it disconnected. She did that. I didn't have anything to do with that.
Q. Was it disconnected because the bill wasn't paid?
A. It was disconnected because she didn't want it anymore, and I paid the bill for it.
Q. The next one is a Duke Power bill from February of 2004 to March of 2004.
MR. WALKER: Stick in a blank space.
(* Exhibit 7 was marked *)
Q. (Ms. Smitherman) Have you seen that one?
A. Yes. It was paid late, but it was paid.
Q. And does it have a disconnect notice on it?
A. They all do.
Q. Did the disconnect notices bother your mother at all?
A. No.
MS. SMITHERMAN: I'd like to mark this letter as Exhibit 8.
(* Exhibit 8 was marked *)
Q. (Ms. Smitherman) It's two pages from the Forsyth County Tax Administration.
Have you seen that?

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A. Yes. They were paid this summer.
Q. Why were the taxes late?
A. She told me Kim had paid them last year. But then I found out in late May that he had not paid them, and so I had to take care of that at the end of June.
MS. SMITHERMAN: Okay, I'd like to mark this as Exhibit 9.
(* Exhibit 9 was marked *)
Q. (Ms. Smitherman) Have you seen this before?
A. Yes.
Q. What is that?
A. It's for the insurance on the house.
Q. Was the insurance on the -- had the insurance on the house lapsed? Is that what that letter says?
A. Yeah, it lapsed last year. Again, I had no knowledge of this and I reinstated it late this spring.
Q. Okay.
A. And because Mom was in the hospital, I never got that bill paid.
Q. So is the house -- does it have any insurance now?

A. I don't know.
MS. SMITHERMAN: I would like to mark this as Exhibit 10.
(* Exhibit 10 was marked *)
Q. (Ms. Smitherman) Have you seen this before?
A. No.
Q. Okay.
A. I've not seen that before.
Q. Were you aware that -- did you know Cathleen had applied for a personal loan for $5,000 from CitiFinancial?
A. No, I had no knowledge of that.
[redacted]
Q. And what was her monthly income?
A. To my knowledge, a little over $2,000.
[redacted]

[redacted]
Q. Can you go into some detail and explain what those bills were?
A. The lights, the water, phone, cable.
Q. Do you remember about how much they were?
A. Depending on the time of year. The light bill is always more in the wintertime.
Q. Do you remember what the range was?
[redacted]
Q. And what about the other bills? What about water?
A. Doctor bills. Pay water every other month.
Q. Do you remember what it was?
A. Usually 20, 30 something.
Q. Did Cathleen have insurance?
A. What kind of insurance?
Q. Insurance that helped to offset the cost of her doctor bills?
A. Yes. She had Medicare.
Q. Did she have any supplemental insurance in addition to Medicare?
A. I only knew about Medicare. I think she had American Postal Workers there for a while.

Q. Do you remember -- do you remember approximately ---
A. --- I just remember paying Medicare.
Q. I'm sorry. Could you say that again?
A. I just remember paying Medicare a number of times.
Q. Do you remember approximately how much per month you paid for her doctor bills?
A. Whatever the dentist or eye doctor was, I guess I paid that.
Q. Do you remember about how much it was?
A. One dentist bill was about 300 and something one month.
Q. Was it always that high?
A. Most of the time -- most of the time it was about $100 or so.
Q. Okay, so we have the electric bill and the water bill and doctor bills.
What other bills were there?
A. Phone and cable.
Q. Do you remember about how much ---
A. --- I paid a cable every month.
Q. Do you remember about how much the cable bill was?
[redacted]

Q. Do you remember about how much the phone bill was?
A. Umm, 40 or 50 something most of the time. A time or two it was about 80 or 90 something.
Q. So it sounds like ---
A. --- She always called her cousin a lot. I don't know who else she called. I didn't keep up with who she was making phone calls to.
[redacted]
Q. Now, you said when you went to the bank to take out the lines of credit in the home equity loan that Cathleen was with you ---
A. --- Uh-huh.
Q. --- Almost every time, but not every time. Right?
A. Yes, except for the last time. But she still had to sign the papers for it. I had to take them to her.
Q. On the sheets where just you signed the papers, why didn't she sign it if she was there?

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A. She had to sign the other -- there are other documents that she signed. I had to take them to her to get her to sign them.
Q. Well, the ones that Truliant gave us, this is back in Exhibit 2, these are all the ones that they gave us, all the signature pages that they had. That's it.
A. She signed everything ---
Q. --- Now, looking ---
A. --- Everything that was given to me for her to sign, she signed.
Q. But looking farther in, the loan applications, these were signed by you alone. Is that right?
This first one from April was signed by her.
A. Uh-huh.
Q. Is that right?
A. Yes.
MR. WALKER: What were the circumstances of her signing that?
Did she sign it in the bank or did you take it home to her to have her sign it?
THE WITNESS: She signed it in the bank. Everything that she did, she either signed it

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herself or I had her permission to do.
Q. (Ms. Smitherman) Now, this one is May 18th, 2003.
A. Uh-huh.
Q. And this one you alone signed. Is that right?
A. Yes. She wanted me to sign it.
Q. So was she at the bank with you?
A. Yes.
Q. And the bank did not require her to sign it?
A. No. She wanted me to sign it and I signed it. Everything that they required her to sign, she signed.
Q. Now ---
A. --- A couple of things I was told that my signature was all that was necessary. That's all I signed.
Q. Was she there when you signed?
A. The last time I went, she wasn't there.
Q. Which one was that? Do you remember about when that was?
A. Whatever the last date was. I don't remember when.
Q. Okay, now ---

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A. --- But she knew about it.
Q. Okay.
A. She told me to do it.
Q. So she was ---
A. --- I was only doing what I was told to do.
Q. So she was present at the bank and they allowed just you to sign things in her accounts?
A. I said except for the last time.
Q. Right. But other than that ---
A. --- Other than that, she was there, yes.
Q. And the bank allowed you to just sign it for her ---
A. --- Uh-huh.
Q. --- Even though she was present. Okay.
Now, have you gone to the clerk's office and filed Cathleen's will with the clerk of court?
A. Yes. I had an appointment for July 16th. I had to wait a week to get that. The attorney was busy the entire week.
Q. What attorney?
A. Mr. Badgett.
Q. Okay.
A. I did not know that my mom was going to die on the 15th. Nobody knows those things. But it

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happened to be for the next day and I went.
He read the will, he explained it to me. He said all you have to do is take it and probate it. And he said there's nothing here for you to administer. He said, your mom left you everything.
He explained that the will became a deed to the house when she died so, therefore, he didn't have to make another deed.
Q. What did ---
A. --- I just did what he told me to do.
Q. What did ---
A. --- And I asked him -- I said, well, I need to sell it to pay the bills. Can I do that? And he said yes, go ahead and sell it.
Q. Why did you make an appointment with him before then?
A. I had some questions I wanted to ask him about.
I never had to deal with a parent dying before and being the only one stuck having to look after anything.
And my brother has been gone for more than a year. He walked out on her last year, told her goodbye, good luck. She tried to call him two or three times that I knew of. He hung up on her. He

didn't show up for more than a year.
Q. So you were going to the lawyer to seek advice for when Cathleen died?
A. Yeah. I needed to know what do I do now, what do I do next. I had to have some advice.
Q. Did you say earlier that you only got the will out of the safe deposit box after she died?
A. Yes, the next day, on Friday, after she passed away on Thursday.
Q. Did you have a copy of the will you were taking to Badgett to talk about?
A. Yes. I took the copy out of the box to take to him, but he had one already in their file. So as it turns out, I didn't need to get it out and take it.
I asked the lady on the phone when I called for an appointment, I said, do I bring the will? What do I do? And she said, well, if you have it, bring it with you. She said, do you know where it is, and I said yes, it's in her lockbox. And she said, well, go get it and bring it. But Mr. Badgett already had a copy of it.
Q. When you went to the clerk, what did you tell the clerk of court?
A. I just answered the questions that they

had on the one page form they have. I answered them and signed it.
Q. Why didn't you list the house as an asset of Cathleen's?
A. I don't know. I probably wasn't asked.
Q. Now, when you -- now, after Cathleen died and you went to the safe deposit box, was only your signature required?
A. Only my signature was required, because my mom fixed it that way. She fixed it as a right of survivorship, that if anything happened to her, I could still get in it and get what I needed.
Q. Now, earlier you had talked about receiving some coins out of the safe deposit box.
Do you know what the value of those was, approximately?
A. I have no earthly idea of what they're worth.
Q. What kind of coins are they?
A. Some silver dollars, some 50 cent pieces, some Roosevelt dimes.
Q. How many were there?
A. Probably three or four silver dollars, a few 50 cent pieces, a few quarters, and $14.70 in dimes.

Q. Do you have any of the receipts from Cathleen's bills that you paid?
A. No. I am not one to keep receipts, stack up paper and stuff.
Q. Do you remember which taxi company it was that would sometimes come and pick her up?
A. Blue Bird Taxi.
Q. How old was your mother when she died?
A. Eighty-two.
Q. And what did she die from?
A. Organ failure as a result of a blood infection, is my understanding.
Q. Who were her doctors?
A. John McManess. There were two more, but I don't remember the other two. That's in the medical record.
Q. Did your mother ever buy anything for Kim or give him any money like she gave you?
A. If she ever bought him anything, I don't know about it. I have no knowledge of that.
Q. Did she ever pay any of his bills?
A. As far as I know, no.
Q. And I'm kind of jumping all over the place.
A. It's another one of those things where she

said he's got a big job, he makes all this money, and she said, I'm trying to take care of you.
Q. Where is the St. Peter's World Outreach Church?
A. It's on Old Lexington Road.
Q. Do you know the address?
A. It's 3683 Old Lexington Road.
Q. And I want to ask you a little more about the debts that your mother paid for you.
A. Uh-huh.
Q. About what they were.
A. Some other credit cards debts.
Q. Anything else?
A. Right off, I can't think of what they were. Some money I had borrowed from different people through the years.
Q. Okay.
A. Paid them back.
Q. I would like for us to look at this power of attorney again, and I want to mark this as a separate exhibit.
What number is it -- this will be Exhibit 11.
(* Exhibit 11 was marked *)
Q. Here, Suzanne, if you could take a look at

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this one.
Is this the same as the one that you looked at in the bank records, only not as smushed in size?
A. Yeah, same one.
[redacted]
Q. Was this on the same day when she did the new will?
A. I'm assuming so.
Q. Why did she make you her attorney-in-fact?
A. Because Kim walked out and left her.
[redacted] you?
[redacted]

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Q. Was there a separate health care power of attorney that was executed at this time, a separate piece of paper?
A. Not to my knowledge.
Q. Did you have the authority to make Cathleen's health care decisions after she became unable to do so herself?
A. She told me she had a living will.
Q. Do you have a copy of that?
A. It's in the lockbox. And again, it had one of these stamps on it at the register of deeds.
Q. Did you make decisions for Cathleen when she was unable to do so herself when she was in the hospital?
A. Yes.
MS. SMITHERMAN: Okay, that's all the questions I have.
THE WITNESS: I was told I had the authority to do that.
Q. (Ms. Smitherman) By whom?
A. The attorneys at the hospital. The doctors told me that I had the health care POA. They had their people look at the living will and the POA that I had. I was told that covered everything.
Q. Now, we don't have a copy of the health

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care POA and we had sent you earlier a request for production of documents for yesterday, a list of documents that we wanted you to bring here.
A. Uh-huh.
Q. Why didn't you bring those?
A. I don't have them yet. I'm still trying to get an attorney to do this thing for me.
MS. SMITHERMAN: I believe that's all the questions I have.

EXAMINATION

BY MR. WALKER:
Q. Ms. Brookshire, do you have monthly statements from the Bank of America and Truliant accounts?
A. [redacted]
Q. So the answer to my question is ---
A. --- I have to go -- I have to go by there and pick them up.
Q. You don't have any in your possession right now?
A. No, I do not.
Q. Do you have any canceled checks of your mother's?
A. No. The bank just sends us statements.

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They shred them. They don't send them to you anymore.
Q. What about the registers for your mother's checking accounts?
A. I don't have those anymore.
Q. What became of them?
A. I threw away a lot of old papers back in the summer. I just threw all that stuff out. I didn't think I would ever need it again.
Q. What about credit card statements?
Do you have any of those for your mother, accounts in her name?
A. I have one for this month.
Q. You don't have any others?
A. No.
Q. What became of the other statements?
A. Every time I would pay something, I would throw that bill away. I don't have space in my house to keep boxes of old checks, old papers and assorted other stuff.
Q. What about documents relating to the vehicle that you own right now? You own a Hummer, as I understand?
A. Yes.
Q. Is that the only vehicle you own?

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A. That's all I own.
Q. Do you have the title to that?
A. Yes, I have the title to it.
Q. All right, and do you have the registration to it?
A. Yes, I have the registration to it.
Q. Do you have that registration in the vehicle right now?
A. Uh-huh.
Q. Is the vehicle parked around here somewhere?
A. It's here in North Carolina.
Q. It's not parked out in our parking lot?
A. No, it's not.
Q. How did you get down here this morning?
A. I bummed a ride with a friend of mine, and she has to go to work in another hour. She has to get me home.
Q. Why didn't you drive your own vehicle down here?
A. Because I was afraid somebody would try and take it. I was advised to move it.
Q. Who gave you that advice?
A. I'm not at liberty to say.
Q. You're not at liberty to refuse to answer

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our questions, so you need to tell me who it is that gave you that advice?
A. I was told to move it.
Q. By whom?
A. Some friends.
Q. Whose names are what?
A. Some of my friends at church.
Q. Whose names are what?
What are the names of these people who gave you this advice to hide your vehicle?
A. I have to be assured that nobody is going to take my only means of transportation. That is all I have, the only way I have to get around. And to allay anybody's fears, I have no intentions of selling it. I don't trade a car every four or five or six years.
Q. Are you going to answer my question or are you refusing to answer the question?
A. I'm not going to get my friends in trouble.
Q. I'll just warn you that refusing to provide an answer to a legitimate question in a deposition can lead to sanctions against you in this case, so I'll ask you one more time.
What are the names of the people who

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advised you to hide your motor vehicle?
A. I mostly decided it myself until I could be assured that it would left alone.
Q. I'll just take that as a refusal to answer my question and just advise that that may lead to some sanctions in this case against you.
Now, I take it, then, you've hidden the vehicle somewhere?
A. I have it where I can get it. But I have to be able to drive it. I don't want to wake up the next morning and it's not sitting in my driveway and I can't go anywhere.
I've got no intentions of doing anything with it. It's mine. My mom bought it for me and I intend to keep it.
Q. Other than the two pieces of jewelry that you said were in a lockbox, what other pieces of jewelry do you own?
A. I don't own any.
Q. What have you done with the two pieces of jewelry that were in the lockbox?
A. I gave them to a lady at church because I don't wear jewelry.
Q. As a gift?
A. As a gift.

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Q. And you did this after your mother died?
A. It was mine to give.
Q. So when did you give the jewelry to the lady at the church? Before or after your mother died?
A. After my mom died.
Q. And what were these two pieces of jewelry? What did they look like?
A. Two necklaces.
Q. Made of what?
A. I don't know what they were made of. One was pink and the other one was kind of a purple-blue stones or some kind. I don't know what they were.
Q. Did you buy them?
A. No, I didn't buy them.
Q. Who had bought them?
A. My mom bought them. She bought them years ago at Schiffman's. It had the receipts with them.
Q. How much were the necklaces worth?
A. One of them was 200 and some dollars and the other was three or 400 and something.
Q. That's what the receipts said?
A. Uh-huh.
Q. Do you have any correspondence from your mother? Letters, cards?

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A. No. She had always sent me birthdays through the years.
Q. Do you have any of those?
A. No. I don't keep old cards and stuff. I keep them for about a year and then I pitch them out.
Q. So the answer to my question is no, you don't have any correspondence or cards from your mother?
A. No. Not now, I don't.
Q. Does your mother in her possessions have any cards or notes or letters from you?
A. Yes, a large number of birthday cards.
Q. Where are they?
A. In the trash.
Q. You've thrown them away?
A. I cleaned out all of her papers and old things and I threw them all out.
Q. What about medical bills relating to the last time she was in the hospital at the time she died?
A. I've not seen any medical bills yet.
Q. Where is mail for your mother going right now?
A. It's going to Bellview Street, but I can't get in to put mail inside, so I don't know who is

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getting the mail.
Q. Why is it you can't get inside?
A. The lock has been changed.
Q. And who is it that changed the locks?
A. I have no idea.
Q. When is the last time you were in the house?
A. I haven't been in it in two or three weeks.
When I got all these papers, I've abided by it. I haven't taken anything out of the house. But somebody has been over there and changed the locks.
Q. And you have no idea who did that?
A. I have no idea who did it. Somebody wrote a sign and put it in the window and I don't know whose writing it is.
Q. What does it say? What does the sign say?
A. Something about not being able to get in the house. I didn't even read it all the other day. I tried to turn the key in the lock and it wouldn't work, so I left.
I have no idea whether anybody has taken anything else out from when the last time I saw it or not.

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Q. As to this house that your mother lived in, you apparently have entered into an agreement with somebody to sell it?
A. Uh-huh.
Q. And that sale, you've been told by the realtor, that that sale is now frozen because of this lawsuit?
A. Yes.
Q. Are you willing to let the sale go through and put the proceeds in escrow?
A. Yes. That would be fine.
Q. Be held by a neutral third person until the lawsuits gets decided?
A. Yes.
Q. You would be willing to do that?
A. Yes. The man that wants it was very adamant about buying it. He was very excited about it. He wanted it to live in himself.
Q. Apart from meeting him when he agreed to buy your house, did you know him otherwise?
A. I've never seen him before in my life. Didn't know him. He came in looking around for about 30 minutes one day.
Q. What about your federal tax return? Did you file a tax return for 2003?

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A. No.
Q. You have not?
A. No.
Q. And why is that?
A. I was told if I didn't have a job that I did not have to file a tax return.
Q. When is the last ---
A. --- And I haven't been able to work.
Q. When is the last time you did file a tax return?
A. I have not have a job. Early '90s.
MR. WALKER: Have you asked her about employment and sources of income?
MS. SMITHERMAN: Uh-huh.
MR. WALKER: And how about where the money went from the Alleghany sale?
MS. SMITHERMAN: Uh-huh.
Q. (Mr. Walker). The day that your mother signed this will in -- was in March of 2003?
A. Uh-huh.
Q. Tell me about that day and how she got to the attorney's office.
A. She called me on the phone that morning and asked me could I take her down to George's office. She had some papers she was making and would

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[illegible] take her down there. I said, yeah, I'll [illegible]
Q. [illegible], and so you drive over and pick her up?
A. So I drove over and picked her up, and I carried her [illegible] and waited for her.
Q. Where did you wait for her?
A. I was going to wait in the lobby, but George invited me to wait in his office, so I went back and sat in the back of his office.
Q. While he was talking to your mother?
A. And they conducted their business between the two of them.
Q. In the office?
A. In his office. His secretary was there.
Q. And you were there?
A. And I was sitting in the back.
Q. Did you see your mother sign the will?
A. [illegible] every paper that she signed. [illegible] what all she was signing. I [illegible] POA.
Q. [illegible] didn't hear Mr. Phillips discuss the contents of the will with your mother?
A. No.
Q. Okay.

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A. He went and got his notary and the other secretaries that were there for witnesses.
Q. But you were also there?
A. I was sitting and watching. That was all I did.
Q. Now ---
A. --- And you can ask any of those people that.
Q. Now, how long were you there in Mr. Phillips' office?
A. Probably an hour or so. I don't know. I don't recall the length of time.
Q. How many other times did you go to Mr. Phillips' office with your mother?
A. That's the only other time I've ever been down there with her.
Q. But you've been down there other times. You said you've been down there to meet with Mr. Badgett.
A. I went after mom passed away. I had an appointment with Mr. Badgett.
Q. Right.
A. I was trying to get to him a week or so before Mom passed away. The doctors were telling me she didn't have very many days. I needed to know

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what do I do when she's gone. How do I do a will, what do I do. I don't know.
Q. Before that had you been to Mr. Phillips' office?
A. No, I had not been there.
Q. Had you talked to Mr. Phillips on the telephone?
A. No, I hadn't spoken with him on the phone.
Q. What about Mr. Badgett?
A. Like I said, I called down there to get an appointment, but he was busy and in court all week that week and that was the first day he had available.
Q. I'm talking about before this will gets signed.
Had you had ---
A. --- I hadn't been there before that.
Q. Was your friend, Sam, with you when you were sitting in Mr. ---
A. --- No, she had no knowledge of it.
MR. WALKER: Do we have all the exhibits marked?
MS. SMITHERMAN: Uh-huh. I have one quick question.

EXAMINATION

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BY MS. SMITHERMAN:
Q. Did your mom have a diamond engagement ring?
A. That is one thing I noticed missing from the lockbox.
When I went to get the will out and take it to Mr. Badgett's office, I remembered she said her rings were in there. I went through everything in that box and her rings were gone, and I do not know what happened to her rings. I was going to bury them with her.
Q. Did you find them anywhere in the house?
A. No, I did not find them in the house. I couldn't locate them anyplace.

EXAMINATION

BY MR. WALKER:
Q. And you ended up having a meeting with the clerk of court at some point, an assistant clerk, at the courthouse?
A. When I had to probate the will, yes. I had to call and make an appointment, and it took two or three weeks to get an appointment.
Q. Okay.
A. And I went down for that.
Q. And did you fill out forms for the clerk?

A. Yes. The lady asked me to answer the questions. I answered the questions and signed it, and she said that's all I need. It took about 10 minutes.

Q. And why is it that no estate was opened?

A. I was told by Mr. Badgett to probate the will. He said you tell the lady you're just there to probate it. That's all you're going to do. And so I did what I was told.

MR. WALKER: Well, I guess the only other thing is our request to you to produce documents about your vehicle, because we do want to know more about this vehicle and you were asked to produce documents about your ownership of it and that would include at least the registration and the title.

THE WITNESS: Uh-huh.

MR. WALKER: And so here on the record, I'm asking you to ---

THE WITNESS: --- I can get those.

MR. WALKER: --- To copy those ---

THE WITNESS: --- I'll be glad to get you a copy of those.

MR. WALKER: --- Send them to me -- send them to me in the mail immediately ---

THE WITNESS: --- Okay.

MR. WALKER: --- So that we don't have to get into an argument about that.

THE WITNESS: I'll get them to you this week.

MR. WALKER: Fine.

Okay, I don't think we've got any other questions, then.

And if you do -- I understand that you don't have a lawyer right now. Is that correct?

THE WITNESS: No, I do not. I have someone I'm going to see after a while to see if they can do this.

MR. WALKER: If you do hire a lawyer, please make sure to give that lawyer my name and phone number and ask them to get in touch with me.

THE WITNESS: He will have all the above.

MR. WALKER: Very good.

All right, thank you for coming today. I think we're all done.

WHEREUPON,

at 12:14 o'clock p.m. the deposition was adjourned.

CERTIFICATION

I, Becky G. Lusk, Notary Public in and for the County of Stokes, State of North Carolina at Large, do hereby certify that there appeared before me the foregoing witness;

That said witness was affirmed by me to state the truth, the whole truth and nothing but the truth;

That the testimony was stenographically recorded by me, reduced to typewriting under my supervision, and the foregoing consecutively numbered pages are a complete and accurate record of the testimony given at said time by said witness;

That the undersigned is not of kin nor in anywise associated with any of the parties to said cause of action, nor any counsel thereto, and that I am not interested in the event(s) thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this the 7th day of October, 2004.

Becky G. Lusk
Court Reporter
Atlantic Professional Reporters
Post Office Box 11672
Winston-Salem, NC 27116-1672

WITNESS CERTIFICATION

I, CATHY SUZANNE BROOKSHIRE, hereby certify:

That I have read and examined the contents of the foregoing testimony as given by me at the time and place hereon indicated, and;

That to the best of my knowledge and belief, the foregoing pages are a complete and accurate record of all the testimony given by me at said time, except as noted on the Attachment A hereto.

I have ___ have not ____
made changes/corrections ______________________________

Cathy Suzanne Brookshire

I,______________________, Notary Public for the County of _____________, State of _________________, hereby certify:

That the herein-above named appeared before me this the ______ day of _______________, 20____, and;

That I personally witnessed the execution of this document for the intents and purposes as herein-above described.

_____________________________
Notary Public

My Commission Expires:

_____________________ (SEAL)

ADDENDUM A

Upon reading and examining my testimony as herein transcribed, I make the following additions, changes and/or corrections, with the accompanying and corresponding reason(s) for the same:

| Page | Line | Is Amended to Read |
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Cathy Suzanne Brookshire

CERTIFICATE OF MAILING

I, Becky G. Lusk, do hereby certify that a letter advising the availability for reading and signing a deposition transcript was served on the witness named below by the placement of said letter in the United States Mail, First Class delivery, with proper postage affixed, addressed as follows:

Cathy Suzanne Brookshire
405 Mica Court
Winston-Salem, NC 27103-6461

This the ______ day of October, 2004.

______________________________

Becky G. Lusk